

EXHIBIT 47

Gregory Gray, Jr.

2/24/2015

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<p>1 MR. POTTIER: Peter Pottier. 2 MS. SARPONG: Yaa Sarpong. 3 MR. RAWLINGS: They will just be 4 observing. 5 MR. LAWRENCE: Good morning. My name is 6 Greg Lawrence with Conti Fenn & Lawrence, and I am 7 counsel for Gregory Gray Jr. and Archipel Capital. 8 And I'd also like to, before we roll on, 9 note that this is not a deposition but on-the-record 10 testimony. 11 VIDEOGRAPHER: I believe I said -- 12 MR. LAWRENCE: I think you said 13 deposition. 14 VIDEOGRAPHER: Pardon me. 15 Will the court reporter please swear in 16 the witness. 17 GREGORY GRAY, JR., 18 Having first been duly sworn, testified as follows: 19 EXAMINATION 20 BY MS. KIM: 21 Q. Can you please state and spell your full 22 name for the record? 23 A. Gregory Wayne Gray Junior; Gregory, 24 G-R-E-G-O-R-Y, Wayne, W-A-Y-N-E, Gray G-R-A-Y, 25 Junior, J-R, J-U-N-I-O-R.</p>	<p>1 Exhibit 1. Have you had an opportunity to review 2 Exhibit 1? 3 A. Yes. 4 Q. Do you have any questions concerning 5 Exhibit 1? 6 A. No. 7 Q. Prior to the opening of the record you 8 were also provided with a copy of the Formal Order of 9 Investigation in this matter and also the Supplemental 10 Order. It will be available for your examination 11 during the course of the proceeding. 12 Have you had an opportunity to review the 13 Formal Order and Supplemental Order? 14 A. Yes. 15 Q. Do you have any questions about the Formal 16 Order or the Supplemental Order? 17 A. No. 18 Q. Are you represented by counsel today? 19 A. Yes. 20 MS. KIM: Counsel, please identify 21 yourself and the firm you work at. 22 MR. LAWRENCE: Gregory Lawrence with Conti 23 Fenn & Lawrence representing both Mr. Gray and 24 Archipel Capital. 25 MS. KIM: Counsel, do you represent any</p>
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<p>1 Q. Are you known by any other names? 2 A. No. 3 Q. Greg, for example? 4 A. Greg. Sorry. 5 Q. So as you heard earlier, I am Hane Kim. I 6 am an attorney with the Division of Enforcement with 7 the United States Securities and Exchange Commission 8 and an officer of the Commission for this -- for the 9 purposes of this proceeding. 10 With me are several colleagues who are 11 also officers of the Commission for purposes of 12 testimony today, Victor Suthammanont and Steve 13 Rawlings, and we are also here with two interns. 14 This is an investigation by the United 15 States Securities and Exchange Commission in the 16 matter of Archipel Capital LLC, NY-9143, to determine 17 whether there have been violations of certain 18 provisions of the Federal Securities Laws; however, 19 the facts developed in this investigation may 20 constitute violations of other federal or state, 21 civil or criminal laws. 22 Prior to the opening of the record I 23 provided you with a copy of Form 1662, which is the 24 Commission's Supplemental Information Form. A copy 25 of that form was previously marked as NY-9143</p>	<p>1 other entity or individual in connection with this 2 investigation? 3 MR. LAWRENCE: Yes. In connection with 4 this as counsel for Archipel, I am also counsel for 5 the entities in which Archipel -- I'm sorry -- 6 Mr. Gray -- in which Mr. Gray is the general partner 7 for so that is BIM Management and the special purpose 8 entities you are going to discuss today. We can put 9 that in writing as well. 10 MS. KIM: What about any employees of 11 either Archipel Capital or BIM Management LP or any of 12 the special purpose entities? 13 MR. LAWRENCE: Well, I think we have had 14 communications relating to that. I don't want to 15 delineate now because I will get confused, but we 16 represent any employees of those entities in their 17 capacities as employees; not in their individual 18 capacities as of yet. We potentially could if that 19 matter would arise. We would have to evaluate from a 20 conflict basis. 21 BY MS. KIM: 22 Q. Mr. Gray, do you know that your counsel 23 also represents Archipel Capital, BIM Management LP 24 and the Archipel-related entities? 25 A. Yes.</p>

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<p>1 Q. Are you aware of potential conflicts that 2 may arise, that could arise? 3 A. I don't know of any conflicts. 4 Q. Are you okay with him representing you 5 today? 6 A. Yes. 7 Q. So before we get started I want to go over 8 a few ground rules about how the testimony should 9 proceed. The court reporter here takes down 10 everything we say, but she can't record gestures, head 11 nods, things like um hum so please make sure your 12 responses are done verbally and with a clear voice 13 loud enough to be heard. 14 The Commission controls the record; 15 therefore, if you need to take a break, you should 16 please ask me. The court reporter will only go off 17 the record at our request, the staff's request. 18 The usual policy is to wait until any 19 pending questions are answered and any follow-up 20 questions are answered before we go on break. 21 If the staff has conversations with 22 either you or your attorney off the record, and they 23 are conversations of substance, when the record is 24 reopened, the staff will briefly summarize the off 25 the record conversations.</p>	<p>1 A. Cynthia, Cynthia is C-Y-N-T-H-I-A, same 2 last name Gray, G-R-A-Y. 3 Greg Edwards, again G-R-E-G, last name 4 Edwards, E-D-W-A-R-D-S. He is the chairman of 5 Archipel Capital. 6 Brad LaSalle, B-R-A-D L-A capital 7 S-A-L-L-E. He works for Archipel Capital. 8 I believe -- and also I have spoken with 9 Devin Stelljes regarding this matter, D-E-V-I-N, last 10 name Stelljes, S-T-E-L-L-J-E-S. 11 Q. Starting with Greg Edwards, when did you 12 last speak with him? 13 A. He called -- I'm sorry. He emailed me 14 yesterday and asked me to call him. I called him and 15 left him a message last night. I have not spoken to 16 him since last Thursday. 17 Q. What did you speak about last Thursday? 18 MR. LAWRENCE: I guess I would just 19 instruct the witness at this point to the extent that 20 he is communicating with any of these individuals 21 regarding attorney -- well, I guess Mr. Edwards and 22 Mr. LaSalle regarding communications with the attorney 23 seeking advice from the attorney or advice that the 24 attorneys provided -- that is me or my law firm -- 25 that we are asserting the attorney-client privilege</p>
<p>1 If you don't understand a question, it is 2 really important that you let me know. I will 3 clarify or be happy to rephrase, otherwise if you 4 answer a question and you don't ask me to clarify or 5 rephrase, it is going to be assumed you understood 6 the question. 7 A. Okay. 8 Q. If you remember anything later on that you 9 should have said earlier, please let me know so that 10 you can clarify or add to your responses. 11 A. Okay. 12 Q. Is there anything that would prevent you 13 from testifying accurately and truthfully today? 14 A. No. 15 Q. Any medical condition that would impair 16 your ability to answer? 17 A. No. It's cold. 18 Q. Are you on any medications or did you take 19 any medications this morning? 20 A. No. 21 Q. Have you spoke with anyone other than your 22 counsel regarding this investigation? 23 A. Yes. I've spoken with my wife. Do you 24 need her name, like her name? 25 Q. Yes, please.</p>	<p>1 over that communication. 2 THE WITNESS: Okay. 3 MR. LAWRENCE: With that caveat. 4 A. When I spoke to Mr. Edwards, I just gave 5 him an update on the overall macro point of view of 6 Archipel Capital. I usually speak with Mr. Edwards 7 three times a week, and we discuss every deal, every 8 offering, any developments in any particular offering 9 that we have open at that point in time. 10 Q. How long have you been speaking with 11 Mr. Edwards three times per week? 12 A. Approximately 2006. 13 BY MR. RAWLINGS: 14 Q. Does Mr. Edwards know that you are 15 appearing for testimony today? 16 A. Yes. 17 Q. Did you speak with Mr. Edwards about any 18 expected substance about what you might say about your 19 testimony today? 20 A. Can you clarify the question? 21 Q. Like did you discuss potential questions 22 you might get and potential answers that you might 23 give, not exempting anything from your counsel, from 24 what your counsel has said? I am just wondering if 25 you and Mr. Edwards discussed not just the fact that</p>
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<p>1 there is testimony today, but substantive responses to 2 potential questions that could be asked during 3 testimony today.</p> <p>4 A. No, we have not.</p> <p>5 Q. Okay.</p> <p>6 BY MS. KIM:</p> <p>7 Q. Going with Mr. Rawlings' question about 8 with Mr. LaSalle, have you discussed the testimony of 9 what you might speak about today with Mr. LaSalle?</p> <p>10 A. No.</p> <p>11 Q. When is the last time you spoke with Mr. 12 LaSalle?</p> <p>13 A. Brad sent me a text message this morning.</p> <p>14 Q. And what was that regarding?</p> <p>15 A. He just said good luck.</p> <p>16 MR. LAWRENCE: You'll need it.</p> <p>17 It's a joke, for the record.</p> <p>18 Q. And when is the last time you spoke with 19 Mr. Stelljes?</p> <p>20 A. Approximately two weeks ago.</p> <p>21 Q. And did you speak with him at that time 22 about the testimony today, that you are giving today?</p> <p>23 A. I've only spoken with him via text 24 communication.</p> <p>25 Q. And did you text with Mr. Stelljes about</p>	<p>1 months, and it could be nine months.</p> <p>2 BY MS. KIM:</p> <p>3 Q. Did he text you anything relating to the 4 investigation?</p> <p>5 A. No.</p> <p>6 MR. LAWRENCE: Other than what he said 7 already.</p> <p>8 Q. Have you spoken with anyone other than 9 your counsel and the four people you mentioned 10 regarding your attendance today to give testimony in 11 this investigation?</p> <p>12 A. A few clients.</p> <p>13 Q. Who are the clients?</p> <p>14 A. Bill McEssy, M-C-E-S-S-Y. To the best of 15 my knowledge, I believe he is the only one.</p> <p>16 Q. Who is Mr. McEssy?</p> <p>17 A. He is an investor of ours.</p> <p>18 Q. When you say "Investor of ours," do you 19 mean --</p> <p>20 A. Of Archipel Capital. Sorry.</p> <p>21 Q. What does he invest in?</p> <p>22 A. Through Archipel Capital? He invests in 23 our venture capital offerings.</p> <p>24 Q. And what was the substance of your 25 conversation with Mr. McEssy?</p>
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<p>1 your testimony?</p> <p>2 A. No.</p> <p>3 Q. And you said you spoke with Mr. Stelljes 4 regarding the investigation?</p> <p>5 A. He told -- yes.</p> <p>6 Q. And what was that conversation?</p> <p>7 A. Just that he went in, and I presume that 8 he testified in front of you a few weeks ago. That's 9 what he communicated to me.</p> <p>10 Q. And did he tell you anything about this 11 testimony a few weeks ago?</p> <p>12 A. No.</p> <p>13 BY MR. RAWLINGS:</p> <p>14 Q. Just to be clear, he didn't tell you any 15 of the substance about what he may or may not have 16 said?</p> <p>17 A. No. He said "I'm going to meet with the 18 SEC tomorrow."</p> <p>19 I said to him "good luck," and then 20 that's really it.</p> <p>21 Q. Just to be clear, he didn't like call you 22 the next day to say "Oh, they asked me this, this and 23 this?"</p> <p>24 A. I have not spoken with him via phone six 25 months. It could be nine months. So minimum of four</p>	<p>1 A. He called me yesterday. He left me a 2 voice mail to call him back.</p> <p>3 I tried to call him back when I was done 4 with my meeting. His offices were closed. I sent 5 him an email this morning letting him know I am 6 meeting with the SEC, and I will call him tomorrow 7 morning.</p> <p>8 Q. And why did he call you yesterday?</p> <p>9 A. I usually talk to Bill weekly.</p> <p>10 Q. What do you talk about?</p> <p>11 A. We seldomly talk about investments. I 12 met with Bill last week when he was in Florida. We 13 will talk about him selling his McDonalds 14 restaurants. He looks to -- he looks to act as a 15 mentor to me and to Archipel. We talk about a wide 16 variety of things, and keeping his house in Florida, 17 selling his house in Florida, him building up his 18 McDonalds empire to north of 50 stores or selling off 19 29 stores. That's basically what I can remember at 20 this point.</p> <p>21 Q. And when you say McDonalds empire, what do 22 you mean?</p> <p>23 A. He is the largest owner of the McDonald 24 franchise I believe in the United States, and it 25 could be larger.</p>

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<p>1 Q. You are appearing here today for testimony 2 pursuant to a subpoena, correct?</p> <p>3 A. Yes.</p> <p>4 Q. A copy of the subpoena and other documents 5 accompanying the subpoena were sent to your attorney 6 on January 13, 2015, was previously marked as NY-914. 7 Exhibit 2.</p> <p>8 (Pause in the proceedings.)</p> <p>9 Q. Mr. Gray, what is Exhibit 2?</p> <p>10 A. It is a communication -- an email 11 communication from the SEC to my counsel. I believe 12 this is the subpoena that was just sent to my 13 counsel.</p> <p>14 Q. And have you seen Exhibit 2 before or a 15 copy of Exhibit 2 before?</p> <p>16 A. I believe this is the subpoena that was 17 sent to me in December, but I can't say for certain.</p> <p>18 Q. Let me give you also this one.</p> <p>19 A. Okay.</p> <p>20 Q. So this is a document dated December 8th, 21 2014 previously marked as NY-9143 Exhibit 3. Was 22 that -- is that the subpoena and other documents 23 accompanying the subpoena that was sent to you on 24 December 8th, 2014?</p> <p>25 A. Sorry. Can you say that again, please?</p>	<p>1 conducted for the requested documents?</p> <p>2 A. We provided everything. We searched my 3 apartment in Chicago, our offices in Buffalo, my 4 laptop computer, my desktop computer working with our 5 counsel Nixon Peabody and our accountant Freed 6 Maxick. Freed is F-R-E-E-D, Maxick is M-A-X-I-C-K.</p> <p>7 Q. You said "we searched." Who is "we"?</p> <p>8 A. Sorry. Myself. I should clarify.</p> <p>9 Q. And have you -- did anyone else help you 10 with that search?</p> <p>11 A. My wife helped me put together documents 12 to produce to our counsel in an organized fashion.</p> <p>13 Q. What search did you do on your laptop 14 computer?</p> <p>15 A. I handed over my laptop computer to -- if 16 I ask my counsel the proper terminology. Was he a -- 17 what would you call him?</p> <p>18 MR. LAWRENCE: IT vendor.</p> <p>19 A. Okay. Sorry. An IT vendor who I guess 20 would mimic a copy of my hard drive. I didn't 21 actually see him do it. He just took my laptop, and 22 then I guess handed it to you. What that looks like 23 I don't know.</p> <p>24 Q. Do you know who that vendor was?</p> <p>25 A. Can I ask my counsel? Do I?</p>
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<p>1 Q. Is that a copy of the subpoena in addition 2 to the other documents that came with the subpoena 3 that was sent to you on December 8, 2014?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. Have you seen Exhibit 3 before?</p> <p>6 A. Yes.</p> <p>7 Q. Exhibit 2, if you go to the third page in 8 that document --</p> <p>9 A. Sorry. Page 3?</p> <p>10 Q. Yes, of the actual document, the third 11 page.</p> <p>12 A. This one (indicating)?</p> <p>13 Q. Yes. Is this a copy of the subpoena you 14 are appearing pursuant to here today?</p> <p>15 A. Yes.</p> <p>16 Q. Then if you go to Exhibit 3, which is the 17 December 8th document, if you go to a similar page in 18 Exhibit 3, roughly five pages in -- six pages in, this 19 subpoena calls for you to produce documents; is that 20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did you conduct a search for documents 23 that may be responsive to this request?</p> <p>24 A. Yes.</p> <p>25 Q. Can you describe the search that was</p>	<p>1 Q. Do you know?</p> <p>2 A. No.</p> <p>3 BY MR. RAWLINGS:</p> <p>4 Q. Just questions like that, if we ask you a 5 question, if you don't know but you know you might be 6 able to ask somebody else, answer the question "I 7 don't know, but," and if it is your counsel who knows, 8 we will talk to your counsel. We don't want you to 9 tell us anything you talked to your counsel about. 10 When you guys talked, there is a wall, and you 11 understand that, and your counsel has already 12 mentioned that.</p> <p>13 A. Okay. I'm sorry.</p> <p>14 Q. Not at all.</p> <p>15 MR. LAWRENCE: Just to be clear, as I am 16 sitting here, he is giving his best recollection. We 17 have had detailed communications with you about this, 18 and we are an open book about the process that we are 19 going through.</p> <p>20 To the extent that he said Nixon Peabody 21 instead of Conti Fenn Lawrence, for example, he is 22 just probably not that up on all the processes, 23 because a lot, obviously, has gone on in cooperation 24 with the staff.</p> <p>25 MR. RAWLINGS: Understood.</p>

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<p>1 BY MS. KIM:</p> <p>2 Q. We discussed your laptop. What about your</p> <p>3 desktop; what search was done on your desktop?</p> <p>4 A. So how I -- I produced every document on</p> <p>5 my desktop that was on my email system so my desktop</p> <p>6 and my laptop mimic each other so everything on my</p> <p>7 laptop is on my desktop and on my email.</p> <p>8 Q. Does that also the mimic the documents</p> <p>9 themselves that are on the laptop?</p> <p>10 A. Yes.</p> <p>11 Q. So it is not limited to just the email?</p> <p>12 A. Correct. Yes.</p> <p>13 Q. I was going to ask, you said you had</p> <p>14 worked with counsel at Nixon Peabody to collect</p> <p>15 documents. Did you mean Greg Lawrence?</p> <p>16 A. There are some documents that Nixon --</p> <p>17 Nixon Peabody was our previous -- Nixon Peabody was</p> <p>18 our counsel for each special purpose entity, and I</p> <p>19 believe you -- I believe the Exchange asked me for</p> <p>20 documents for -- sub documents for -- sub</p> <p>21 documents -- subscription documents for clients.</p> <p>22 And I asked Nixon Peabody to provide</p> <p>23 copies in their possession to us so I was speaking</p> <p>24 with regard to Nixon Peabody at that point in time,</p> <p>25 just to clarify.</p>	<p>1 Everloop, E-V-E-R-L-O-O-P. Archipel Capital-Agrivida</p> <p>2 LP, Archipel Capital-Social Media Fund, and Archipel</p> <p>3 Capital-Bloom Energy LP. I believe that is</p> <p>4 everything.</p> <p>5 Q. When you said it was Archipel</p> <p>6 Capital-Agrivida LP?</p> <p>7 A. I believe it is an LP. It could be an</p> <p>8 LLC. I would have to look.</p> <p>9 Q. And for Archipel Capital-Social Media Fund</p> <p>10 LP, were there multiple Social Media Fund LPs?</p> <p>11 A. I, II, III and IV.</p> <p>12 Q. Were they all represented by Freed Maxick</p> <p>13 for accounting purposes?</p> <p>14 A. Yes.</p> <p>15 Q. What about Archipel Capital-Lineagen?</p> <p>16 A. Sorry. I forgot Lineagen. Lineagen is</p> <p>17 L-I-N-E-A-G-E-N.</p> <p>18 Q. And then there is also Archipel</p> <p>19 Capital-Late Stage Fund LP?</p> <p>20 A. This would be the first year we do K-1s,</p> <p>21 and we have hired a new accounting firm to represent</p> <p>22 us going forward.</p> <p>23 Q. What is the new accounting firm?</p> <p>24 A. It's going to be KRFS.</p> <p>25 Q. And when did you hire KRFS?</p>
<p>1 Q. Did you ask for any other documents from</p> <p>2 Nixon Peabody to produce to the staff?</p> <p>3 A. Outside of subscription documents? Not</p> <p>4 to my knowledge.</p> <p>5 Q. And you said you also worked with Freed</p> <p>6 Maxick to produce documents, and Freed Maxick is your</p> <p>7 accountant?</p> <p>8 A. They were our accountant, correct, yes.</p> <p>9 Q. Is Freed Maxick no longer the accountant</p> <p>10 for --</p> <p>11 A. Correct -- sorry. Yes.</p> <p>12 Q. Freed Maxick was the accountant for which</p> <p>13 entities?</p> <p>14 A. All of them. Would you like them -- the</p> <p>15 names?</p> <p>16 Q. Would it be Archipel Capital LLC?</p> <p>17 A. No -- well, let me rephrase that.</p> <p>18 Archipel Capital is a brand name only so there are --</p> <p>19 there isn't income or expenses associated with</p> <p>20 Archipel Capital. To the extent we would need any</p> <p>21 taxes filed for Archipel, Freed Maxick would have</p> <p>22 handled it for us in the past.</p> <p>23 Freed Maxick was our accountant for BIM</p> <p>24 Management LP, which is the general partner, for</p> <p>25 Bennington Everloop LP, which was an investment in</p>	<p>1 A. Two weeks ago? Within the last two</p> <p>2 weeks.</p> <p>3 Q. And are they the accounting firm for BIM</p> <p>4 Management LP as well?</p> <p>5 A. They will be. So for every entity that</p> <p>6 we just described, KRFS will handle not only the</p> <p>7 accounting needs for us, they are actually going to</p> <p>8 give our -- give us greater detail for our clients as</p> <p>9 well so they are going to actually do fund</p> <p>10 administration for us as well.</p> <p>11 Q. And what do you mean by fund</p> <p>12 administration?</p> <p>13 A. So they will handle all the bookkeeping,</p> <p>14 the compliance, the treasury aspects associated with</p> <p>15 our investors.</p> <p>16 Q. And who is handling bookkeeping now?</p> <p>17 A. Can you clarify bookkeeping?</p> <p>18 Q. You said that they -- as part of fund</p> <p>19 administration they are going to do bookkeeping,</p> <p>20 compliance and treasury --</p> <p>21 A. Treasury services.</p> <p>22 Q. So the bookkeeping work that you are</p> <p>23 describing, what does that mean?</p> <p>24 A. So the bookkeeping will be more or</p> <p>25 less -- well, the expenses associated with the fund,</p>

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<p>1 so we obviously incur legal and accounting expenses 2 for each fund so they will be handling the 3 bookkeeping.</p> <p>4 Currently as it stands now when an 5 investor sends in his or her subscription booklet to 6 us, we actually input that data into our database. 7 Now that we will all be outsourced into KRFS so that 8 investor.net subscription document will now be sent 9 to KRFS, they will add that information to the 10 database, and they will start to create their own 11 structure for us.</p> <p>12 Q. Currently -- so you said now the investor 13 sends in a booklet. You put that information into 14 "our database"?</p> <p>15 A. Yes.</p> <p>16 Q. Who puts that information into the 17 database?</p> <p>18 A. To clarify, sometimes the investors could 19 also send the documents to Nixon Peabody, our former 20 counsel, or to us. That information would be 21 inputted into our database either by myself or my 22 former assistant, Kristy, last name Cicchitti, 23 C-I-C-H-I-T-T-I.</p> <p>24 Q. And does Ms. Cicchitti still work with 25 you?</p>	<p>1 compliance?</p> <p>2 A. Yes.</p> <p>3 Q. And what does that mean?</p> <p>4 A. Just making sure that everything is 5 being -- I hate to use the word compliant -- I guess 6 there is -- everything is being compliant for our 7 investors.</p> <p>8 Q. Everything is being compliant with what?</p> <p>9 A. I guess regulatory rules and regulations.</p> <p>10 Q. And who does that? Who handles compliance 11 for Archipel Capital and the related entities now?</p> <p>12 A. I'd say it's a combination between Nixon 13 Peabody, our former counsel, and myself.</p> <p>14 Q. Has that been the case -- how long has 15 Archipel Capital been in existence?</p> <p>16 A. The LLC formation? I believe it is 2006.</p> <p>17 Q. I am going to, just for ease of -- there 18 are a lot of Archipel Capital hyphen name LP so for 19 ease of use I think I am going to set some shorthands.</p> <p>20 A. You can call it Bloom Energy.</p> <p>BY MR. RAWLINGS:</p> <p>22 Q. Before you move off the topic, I just want 23 to ask, why did Archipel and the entities change their 24 accountants?</p> <p>25 A. Why did we change now?</p>
<p>1 A. No. She resigned in, I believe, 2 September of 2014. She took a new job.</p> <p>3 Q. So since September 2014 until today, 4 who -- who puts in the investor information into the 5 database?</p> <p>6 A. I have been.</p> <p>7 Q. And can you describe what the database is?</p> <p>8 A. Sure. So the database would be your 9 name, your address, your social security number. 10 Then we would have boxes associated with 11 the form making sure we have all the necessary 12 paperwork such as a W-9. A W-9 is a tax form filled 13 out, and to make sure all the information is filled 14 out correctly so think of it name, social, address, 15 how the money was received, whether it was a check 16 an incoming wire, the date it was received, and then 17 subscription booklet filled out, okay; or no, we need 18 to send back, we are missing a signature; and then 19 W-9, if it is missing, we have a red spot for missing 20 w-9, or yellow. A color. I forget if it is red or 21 yellow.</p> <p>22 Q. And the database is just an Excel 23 spreadsheet?</p> <p>24 A. Yes.</p> <p>25 Q. You said KRFS is going to be handling</p>	<p>1 Q. Yes.</p> <p>2 A. Just to offer greater service to our 3 clients. At the end of the day, we want to, as our 4 firm continues to grow, we want to offer more to our 5 clients, and we are very good in my eyes at what we 6 are good at, and there's ways we can improve our 7 firm, and we looked at our accounting relationship as 8 a way we could improve our firm and give our clients 9 more.</p> <p>10 So the fund administration is absolutely 11 the best case scenario to outsource that, and we need 12 a partner for our accounting firm just as we had a 13 partner for our law firm.</p> <p>14 Q. Just to be clear, so the record is clear, 15 your former accounting firm, they didn't resign or 16 anything, did they?</p> <p>17 A. No. I had been looking at -- I hate 18 using the word terminating the relationship -- since 19 last year. We have been interviewing accountants 20 since Q3 since last year, local accountants in 21 western New York, and nobody could offer us the fund 22 administration services we are looking for so we have 23 been looking, working with our counsel, working 24 really nationwide looking at who is the best fit for 25 us going forward.</p>
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<p>1 Q. Thanks.</p> <p>2 BY MS. KIM:</p> <p>3 Q. So I'm just going to set up some shorthand</p> <p>4 names, and then we will go back to the questions.</p> <p>5 Archipel Capital LLC I would like to call</p> <p>6 Archipel or Archipel Capital; does that make sense?</p> <p>7 A. Yes.</p> <p>8 Q. There is also BIM Management LP. I think</p> <p>9 that, probably BIM Management?</p> <p>10 A. That's fine.</p> <p>11 Q. And then for the LPs, I was just going to</p> <p>12 go with Bloom Energy LP, Lineagen LP when I am</p> <p>13 referencing the partnership. The Archipel</p> <p>14 Capital-Bloom Energy LP, I will call it Bloom Energy</p> <p>15 LP for short.</p> <p>16 A. You can call it Bloom Energy if you want.</p> <p>17 Q. That's fine. However you would prefer is fine by me.</p> <p>18 Q. Because there is also a company Bloom</p> <p>19 Energy, right?</p> <p>20 A. Yes.</p> <p>21 Q. Just to make it clear, I will add the LP</p> <p>22 when I am talking about the partnership.</p> <p>23 A. Okay.</p> <p>24 Q. And you have referenced Nixon Peabody as</p> <p>25 former counsel --</p>	<p>1 folks, the texts that you have sent, are those on</p> <p>2 your -- like a personal smartphone or something like</p> <p>3 that?</p> <p>4 A. An iPhone.</p> <p>5 Q. iPhone?</p> <p>6 A. Correct.</p> <p>7 Q. Is that an Archipel iPhone or just your</p> <p>8 own personal iPhone?</p> <p>9 A. Well, I mean, it's used for -- both. I</p> <p>10 guess to clarify, I'm not really -- the number, my</p> <p>11 cell phone number, is a number listed on Archipel</p> <p>12 Capital's website so I guess the number would be</p> <p>13 both.</p> <p>14 Q. And I just want to -- do you know if</p> <p>15 counsel had access to and searched for texts at all?</p> <p>16 You might not know the answer to the question.</p> <p>17 A. I don't know.</p> <p>18 Q. I take it that your smartphone also</p> <p>19 receives emails as well, right?</p> <p>20 A. Yes.</p> <p>21 Q. Are those emails -- do you know if your</p> <p>22 counsel had access to emails that would have been on</p> <p>23 your smartphone in responding -- in responding to the</p> <p>24 subpoena?</p> <p>25 A. Yes. He and she would have.</p>
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<p>1 A. Correct.</p> <p>2 Q. -- a few times. Why are they former</p> <p>3 counsel?</p> <p>4 A. I guess -- well, due to the investigation</p> <p>5 by the SEC, both parties decided it's best to move on</p> <p>6 from each other in the current state.</p> <p>7 Q. And do you have -- have you replaced Nixon</p> <p>8 Peabody with other counsel?</p> <p>9 A. We're in final discussions with one of</p> <p>10 two firms -- with two firms, yes.</p> <p>11 BY MR. RAWLINGS:</p> <p>12 Q. What are the two firms you are</p> <p>13 considering?</p> <p>14 A. Vedder & Price out of Chicago, and</p> <p>15 something & Thorberg or Thorberg & something.</p> <p>16 MR. LAWRENCE: Barnes & Thornberg.</p> <p>17 A. They have offices nationwide.</p> <p>18 BY MS. KIM:</p> <p>19 Q. Do you have any documents responsive to</p> <p>20 the subpoena within your personal possession that have</p> <p>21 not been produced?</p> <p>22 A. Not to my knowledge, no.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. I just want to ask, because you mentioned</p> <p>25 about receiving texts from Mr. Steljes and other</p>	<p>1 Q. Okay.</p> <p>2 BY MS. KIM:</p> <p>3 Q. Are there any other documents on the</p> <p>4 iPhone that wouldn't be otherwise on the laptop or</p> <p>5 desktop?</p> <p>6 A. No.</p> <p>7 Q. Do you know of any documents that are</p> <p>8 responsive to the requests in the documents subpoena,</p> <p>9 Exhibit 3, that have been previously in your</p> <p>10 possession but were not given to the staff because</p> <p>11 they are lost or destroyed or otherwise disposed of?</p> <p>12 A. Not my knowledge.</p> <p>13 BY MR. RAWLINGS:</p> <p>14 Q. Just to clarify that, and everybody gets a</p> <p>15 little on edge when we say lost or destroyed, the</p> <p>16 question is to get at the -- if a document was</p> <p>17 destroyed five months ago before we ever even came</p> <p>18 along on the scene, we want to know if you have a</p> <p>19 present memory now of that happening, this is the time</p> <p>20 to tell us, but also if there was a fire or flood</p> <p>21 where documents were lost, that type of a thing, so we</p> <p>22 are just wondering if you are aware of any of those</p> <p>23 events where there might be relevant documents but</p> <p>24 they just don't happen to exist now for whatever</p> <p>25 reason?</p>

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<p>1 A. The only event I can recall is the 2 building that we used to have office space in, 1716 3 Main Street, we did have a break-in, and they did 4 steal one or two laptops, and that would have been -- 5 it is embarrassing. I can't tell you if it is 2011 6 or 2012.</p> <p>7 Q. It doesn't have to be exact. That's fine.</p> <p>8 A. We had two laptops stolen from our 9 offices.</p> <p>10 Q. And I take it information on those laptops 11 at that point in time, it wasn't like there was some 12 server where all the stuff on that laptop would have 13 also existed?</p> <p>14 A. The only server where it would have 15 existed would have been our -- we use Intermedia as 16 our email provider, and the other party at that time 17 whose laptop was stolen is Devin Stelljes, and Devin 18 and I would communicate via email back and forth with 19 these documents so those documents would be on the 20 server, the Intermedia Exchange server.</p> <p>21 Q. Got it. But there may have been other 22 documents on those two computers that just -- that 23 they were on the computers and they are gone?</p> <p>24 A. Yes.</p> <p>25 Q. Thanks.</p>	<p>1 secretary to put on a cleaner version.</p> <p>2 Q. And did you answer the questions in 3 Exhibit 4 completely?</p> <p>4 A. Yes.</p> <p>5 Q. I want to go over a few of the questions.</p> <p>6 Your response to question 7, which requests "list all 7 residences you occupied at any time during the last 8 four years," and it continues on after that.</p> <p>9 The first three properties or the first 10 three entries state that you -- they are your present 11 residences; is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. So there is an address in Buffalo, one 14 address in Chicago and one address in Lake Worth, 15 Florida; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Which of these is your primary residence?</p> <p>18 A. I would say Buffalo, New York.</p> <p>19 Q. Are there any addresses that are missing 20 that you resided in in the last four years? For 21 example, did you live in Orchard Park in the last four 22 years?</p> <p>23 A. No.</p> <p>24 Q. And 25 is that the address that you gave with there was a</p>
<p>1 BY MS. KIM:</p> <p>2 Q. And do you understand you are still under 3 an obligation to produce documents responsive to the 4 subpoena?</p> <p>5 A. Yes.</p> <p>6 Q. And we understand you are still doing 7 rolling productions?</p> <p>8 A. Yes.</p> <p>9 MS. KIM: Please mark this exhibit. 10 (Background Questionnaire marked 11 Exhibit 4.)</p> <p>12 BY MS. KIM:</p> <p>13 Q. I have asked the court reporter to mark 14 Exhibit NY-9143 which is labeled Background 15 Questionnaire. Mr. Gray, what is this document?</p> <p>16 A. This is a document that the Exchange 17 asked me to fill out for this hearing.</p> <p>18 Q. By "the Exchange" you mean --</p> <p>19 A. Sorry. The SEC.</p> <p>20 Q. And did you fill out this document?</p> <p>21 A. I provided the information for this 22 document.</p> <p>23 Q. Did your counsel prepare it?</p> <p>24 A. I prepared it on a Word document typed 25 in, and then I gave that information to his legal</p>	<p>1 Page 34</p> <p>1 break-in?</p> <p>2 A. Yes.</p> <p>3 Q. Did you say before that that was a 4 business address?</p> <p>5 A. Yes. So the building, if you would like 6 me to clarify, was a mixed-use building so the first 7 floor was 3200 square feet of almost gallery 8 space/office space. Above the building was a loft 9 residence; separate entrances, separate parcel post 10 numbers, et cetera.</p> <p>11 Q. Was the business entity -- well, which 12 business entity operated out of that Main Street 13 address?</p> <p>14 A. Can you clarify?</p> <p>15 Q. Is it Archipel Capital working out of there? 16 there or BIM Management LP working out of there?</p> <p>17 A. I would say all the entities that were 18 in -- open at this point in time, we did business out 19 of this office from.</p> <p>20 Q. And they were renting space from the art 21 gallery, or was that in the loft?</p> <p>22 A. I own the building. Sorry.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. I just want to -- when you say that 25 Buffalo is your primary residence, can you give it a</p>

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<p>1 estimate as to sort of how often you spend in the 2 Buffalo residence versus the Chicago residence versus 3 the Florida residence?</p> <p>4 A. Right now it's a little cold.</p> <p>5 Q. In both places, Chicago and Buffalo.</p> <p>6 A. So I would say my answer is from January.</p> <p>7 My daughter has a break in Martin Luther King week so 8 we were in Florida extensively in January.</p> <p>9 She had midwinter break in February, 10 which we just came back from.</p> <p>11 Then she has spring break, she has two 12 weeks off in March.</p> <p>13 I would say if you are looking at 14 breaking it down by quarters, Q1 I would say 15 75 percent of my time is Florida, 25 percent of my 16 time is Buffalo.</p> <p>17 I have not been to Chicago since 18 Thanksgiving. I am flying there tonight.</p> <p>19 I would say looking at Q2 onward, I would 20 say it is probably 75 percent Buffalo, 25 percent 21 Chicago.</p> <p>22 And I would say that is fairly true for 23 Q3, and then Q4 it gets cold again.</p> <p>24 I would say Q4 is probably almost 25 60 percent Buffalo, 70 percent Buffalo, 30 percent</p>	<p>1 A. No. It is a home office phone in 2 Buffalo, New York.</p> <p>3 Q. Is the 312 number a cell phone?</p> <p>4 A. Yes.</p> <p>5 Q. Are there any other telephone numbers that 6 you use?</p> <p>7 A. Not to my knowledge, no.</p> <p>8 Q. Like in the Florida home there isn't a 9 separate landline?</p> <p>10 A. Cell phone. No.</p> <p>11 Q. What about -- this question also asks for 12 Google Voice, Skype or video conferencing numbers. Do 13 you have any of those?</p> <p>14 A. I have spoken to people on Skype. I am 15 unaware if there is a number associated or just a 16 name. Forgive my ignorance. I don't believe I have 17 a number on Skype, and I don't have a number on 18 Google Voice or the other things.</p> <p>19 Q. And then if you turn to the next page, 20 which is page 3 of Exhibit 4 -- it is the same exhibit 21 you are in -- question 13, question 13 asks for "all 22 electronic devices including but not limited to 23 desktop computers, laptop computers, mobile phones, 24 computer tablets, external storage devices," and 25 continues on from there.</p>
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<p>1 Florida.</p> <p>2 BY MS. KIM:</p> <p>3 Q. I am a little confused like why you live 4 part of the time in Chicago, part of the time in 5 Buffalo?</p> <p>6 A. We have clients in Chicago that we 7 service, and it is easier to maintain a small 8 apartment just to make me feel more at home than 9 renting hotels every single time I go there.</p> <p>10 Q. It is not like your whole family moves to 11 Chicago?</p> <p>12 A. No, no. Sorry. My daughter was born in 13 Chicago. My wife and I lived there for a period of 14 time. We like to give them culture and experience of 15 city life so we do spend a lot of time there.</p> <p>16 But, no. My wife works in Buffalo full 17 time. My daughter goes to school in Buffalo only. 18 We are not taking her from school to school. So no. 19 We do travel frequently, but that's it.</p> <p>20 Q. And then your response to question 8 on 21 the next page of Exhibit 4, and you have two -- the 22 question requests your telephone numbers and 23 telecommunication services that you use, regularly 24 use. The first one is Verizon. Is 25 that a cell phone?</p>	<p>1 I see here you listed the home desktop 2 which you discussed earlier; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And the laptop which you also discussed 5 earlier?</p> <p>6 A. Yes.</p> <p>7 Q. And before 2013, did you have different 8 computers?</p> <p>9 A. We had an older -- sorry -- I had an 10 older iMac, yes, whatever the desktop of Mac is 11 called.</p> <p>12 Q. Did you have any other laptops?</p> <p>13 A. No, other than the one that was stolen a 14 few years ago.</p> <p>15 Q. And the laptop that was stolen, was that 16 your laptop?</p> <p>17 A. I believe we had two laptops stolen. One 18 was Devin Stelljes that I provided him, and one was 19 mine.</p> <p>20 Q. Apart from the Macbook listed here and the 21 two laptops that were stolen, have you had any another 22 laptops in the past four years?</p> <p>23 A. No.</p> <p>24 Q. This question also asks for mobile phones. 25 Have you had mobile phones in the past four years?</p>

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<p>1 A. Yes. Sorry.</p> <p>2 Q. And I know you mentioned you currently</p> <p>3 have an iPhone.</p> <p>4 A. Yes.</p> <p>5 Q. How long have you had that iPhone?</p> <p>6 A. Thanksgiving 2014.</p> <p>7 Q. The new iPhone 6?</p> <p>8 A. That's the latest one? The big one, the</p> <p>9 plus. I don't know what number it is, but I have the</p> <p>10 big iPhone, the big one.</p> <p>11 Q. Did you have an iPhone before that?</p> <p>12 A. Yes.</p> <p>13 Q. And how long did you have the iPhone that</p> <p>14 you had before Thanksgiving 2014?</p> <p>15 A. I believe 14 months.</p> <p>16 Q. And do you still have that iPhone?</p> <p>17 A. I traded it in.</p> <p>18 Q. So before these two phones that we just</p> <p>19 discussed, did you have any other phone?</p> <p>20 A. I've had an iPhone before that phone.</p> <p>21 Q. And do you still have that iPhone?</p> <p>22 A. No. That was also traded in.</p> <p>23 Q. Do you have any computer tablets?</p> <p>24 A. I have an iPad.</p> <p>25 Q. And how long have you had that iPad for?</p>	<p>1 A. No external storage devices.</p> <p>2 Q. If you turn to page 4 of this Exhibit 4, I</p> <p>3 want to ask you about question 16. It says "Are you</p> <p>4 now or have you ever been a beneficial owner, directly</p> <p>5 or indirectly, of any privately held company," and</p> <p>6 then the question continues on from there.</p> <p>7 I see here that you listed Everloop,</p> <p>8 Twitter, Agrivida, Bloom Energy Lineagen. Are these</p> <p>9 names referencing the LPs or the entities?</p> <p>10 A. Say that again. Sorry.</p> <p>11 Q. For example, Everloop, the reference to</p> <p>12 Everloop here, which is the first two lines of your</p> <p>13 response, does that mean Everloop Incorporated or does</p> <p>14 that mean Everloop the limited partnership -- sorry --</p> <p>15 the Bennington Everloop Limited Partnership?</p> <p>16 A. So with regard to Everloop, I had a</p> <p>17 personal \$50,000 investment in Everloop.</p> <p>18 In addition, we also had a 10 percent</p> <p>19 carried interest in the Bennington Everloop Limited</p> <p>20 Partnership.</p> <p>21 Does that answer your question or no?</p> <p>22 I just want to make sure I am answering</p> <p>23 what you wanted from me.</p> <p>24 Q. Because it doesn't -- it's hard for me to</p> <p>25 say -- for example, BIM Management is not included on</p>
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<p>1 A. About 14 months.</p> <p>2 Q. And before the iPad that you currently</p> <p>3 have, did you have any other computer tablet?</p> <p>4 A. No.</p> <p>5 Q. Do you have email on the iPad?</p> <p>6 A. Yes.</p> <p>7 Q. Was that email searched in connection with</p> <p>8 producing documents for the Commission?</p> <p>9 A. That email is the same email that's on my</p> <p>10 phone. It is the Archipel Capital email so yes.</p> <p>11 Q. Are there any other documents on the iPad</p> <p>12 that aren't otherwise on your computer or laptop?</p> <p>13 A. No.</p> <p>14 Q. Do you receive messages on your iPad?</p> <p>15 A. No.</p> <p>16 Q. By messages I mean like i-messages or text</p> <p>17 messages.</p> <p>18 A. Yes -- yes, no. My daughter pretty much</p> <p>19 hijacks my iPad.</p> <p>20 Q. And then the last one in this question 13</p> <p>21 would be external storage devices. Are there any</p> <p>22 external storage devices that you regularly use?</p> <p>23 A. Like a thumb drive?</p> <p>24 Q. Could be a thumb drive or maybe a jump</p> <p>25 drive.</p>	<p>1 this list.</p> <p>2 A. Right.</p> <p>3 Q. So I am just wondering, are you an owner</p> <p>4 of BIM Management?</p> <p>5 A. Yes.</p> <p>6 BY MR. RAWLINGS:</p> <p>7 Q. What is it that you own in BIM Management?</p> <p>8 Because it's an LP, right?</p> <p>9 A. It is an LP, yes.</p> <p>10 Q. It is a partnership interest that you own?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 MR. LAWRENCE: Can I keep this copy? I am</p> <p>14 writing down.</p> <p>15 BY MS. KIM:</p> <p>16 Q. What percentage -- do you have other</p> <p>17 partners in BIM Management LP?</p> <p>18 A. I do, yes.</p> <p>19 Q. Who are those partners?</p> <p>20 A. Greg Edwards and Tony Oram, O-R-A-M.</p> <p>21 Q. I will go back to those people.</p> <p>22 So then for number 16, also, you know, it</p> <p>23 doesn't list Archipel Capital LLC. Are you an owner</p> <p>24 of Archipel Capital LLC?</p> <p>25 A. I am, yes. Again, to clarify, Archipel</p>

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<p>1 Capital LLC is the name brand only so there isn't --</p> <p>2 I don't want to say it is worthless. Obviously we</p> <p>3 are creating value, but it doesn't have any monetary</p> <p>4 value.</p> <p>5 Q. What is your ownership interest; is it</p> <p>6 shares?</p> <p>7 A. Percentage.</p> <p>8 Q. What percentage do you own?</p> <p>9 A. Of Archipel Capital? I own 65.1 percent.</p> <p>10 Q. And who owns the other part of that?</p> <p>11 A. Greg Edwards owns 25 percent, and Tony</p> <p>12 Oram owns 9.9 percent.</p> <p>13 BY MR. RAWLINGS:</p> <p>14 Q. And to clarify, is that percent of stock,</p> <p>15 common stock?</p> <p>16 A. It's of the limited partnership.</p> <p>17 Q. Because it is an LLC, though. Archipel</p> <p>18 LLC.</p> <p>19 First let me ask this question: Is it</p> <p>20 actually a company registered as a company in</p> <p>21 someplace, a business?</p> <p>22 A. Yes.</p> <p>23 Q. Where?</p> <p>24 A. New York.</p> <p>25 Q. You may not know this, but do you know</p>	<p>1 agrees.</p> <p>2 MR. LAWRENCE: Yes.</p> <p>3 Q. I apologize for stopping you in</p> <p>4 mid-sentence.</p> <p>5 MR. RAWLINGS: Perhaps you could remind</p> <p>6 him what the question was.</p> <p>7 Q. If you remember it, go ahead.</p> <p>8 A. I was basically just answering that</p> <p>9 Archipel Capital was created when we hired Nixon</p> <p>10 Peabody in May of 2000 -- April, May of 2010. They</p> <p>11 told us we needed to create a general partnership to</p> <p>12 accept the monies.</p> <p>13 So Nixon Peabody created what is now</p> <p>14 known as BIM Management LP.</p> <p>15 So for all intents and purposes, that is</p> <p>16 why I keep referring to Archipel Capital. Does it</p> <p>17 have any value per se? All the money -- all the</p> <p>18 money we receive from management fees, et cetera, is</p> <p>19 is blown through BIM Management LP, just to clarify.</p> <p>20 Q. So Archipel Capital LLC does not file a</p> <p>21 tax return?</p> <p>22 A. According to our tax accountants, we</p> <p>23 don't need to file a tax return because there isn't</p> <p>24 anything -- any money coming in and coming out.</p> <p>25 It did in 2011, I believe, because -- so</p>
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<p>1 like how many shares it has outstanding?</p> <p>2 A. I don't know.</p> <p>3 MR. LAWRENCE: LLCs don't have shares.</p> <p>4 MR. RAWLINGS: So there I just asked a</p> <p>5 dumb question. Not a corporate lawyer.</p> <p>6 Q. What does it have?</p> <p>7 A. To add -- if you don't want this answer,</p> <p>8 then stop me, but basically Archipel Capital was</p> <p>9 created to invest in venture capital offerings.</p> <p>10 When we hired Nixon Peabody in</p> <p>11 April 2011, they told us we should --</p> <p>12 Q. Let me stop you.</p> <p>13 MR. RAWLINGS: Counsel?</p> <p>14 MR. LAWRENCE: Sorry.</p> <p>15 MR. RAWLINGS: I would just sort of say</p> <p>16 for the record, and I think we will get to this later,</p> <p>17 there has been an agreement of an attorney-client</p> <p>18 waiver with respect to the formation of the Archipel</p> <p>19 entities that has been documented between counsel and</p> <p>20 the staff.</p> <p>21 It is my perception that this question,</p> <p>22 the answer to it which is otherwise privileged, which</p> <p>23 is you relaying to us things Nixon Peabody said to</p> <p>24 you, falls within that waiver.</p> <p>25 I just want to make sure your counsel</p>	<p>1 when we accepted Greg Edwards and Tony Oram's monies</p> <p>2 in, obviously that is investment income so we filed a</p> <p>3 tax return whatever year they invested in our</p> <p>4 partnership.</p> <p>5 But since we created BIM Management LP,</p> <p>6 we haven't needed to file a tax return.</p> <p>7 Q. Got it. Thank you.</p> <p>8 MR. LAWRENCE: Just a clarification. You</p> <p>9 said 2010 you retained Nixon Peabody.</p> <p>10 THE WITNESS: 2011. Sorry.</p> <p>11 MR. RAWLINGS: Thank you, counsel.</p> <p>12 BY MS. KIM:</p> <p>13 Q. Did Archipel Capital receive fees from</p> <p>14 2006 to 2011?</p> <p>15 A. No. Can you clarify fees?</p> <p>16 Q. You had said before that Archipel Capital</p> <p>17 was incorporated in 2006.</p> <p>18 A. Correct.</p> <p>19 Q. Was it also created in 2006?</p> <p>20 A. Created meaning --</p> <p>21 Q. Did it exist in -- when did it --</p> <p>22 A. The entity existed. The idea existed and</p> <p>23 the entity behind it existed.</p> <p>24 Q. Before 2006?</p> <p>25 A. No. In 2006.</p>

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<p>1 Q. And so from 2006 until BIM Management LP 2 was created, what did Archipel Capital do? 3 A. So I was previously employed with 4 Advanced Equities through 2008, and then after that 5 obviously we had the world economic crisis, not a 6 good time to invest in venture capital, so Archipel 7 Capital really didn't come to fruition until our 8 first offering, which was Everloop, approximately 9 April, May 2011.</p> <p>10 BY MR. RAWLINGS: 11 Q. Just to be super clear, during that 12 period, so there wouldn't have been any BIM-related or 13 Archipel entity related fees, did you use Archipel 14 Capital as an entity in which you might have done some 15 consulting or done some sort of work through that it 16 would have received income back then? 17 A. No. 18 Q. Okay. 19 BY MS. KIM: 20 Q. Was Archipel Capital from 2006 to 2011 21 involved in any other investments? 22 A. From 2006 to 2011? 23 Q. Yes, 2006 to 2011. So from formation 24 until BIM Management came around. 25 A. Archipel Capital was not. Its partners</p>	<p>1 A. Yes. 2 Q. Whose money? 3 A. Well, for example, I am an investor in 4 Advanced Equities Green Tech Media I, which is Bloom 5 Energy, as was Greg Edwards, as was Tony Oram. 6 There are other portfolio companies they 7 invested in either directly with my help while I was 8 employed at Advanced Equities. 9 I can give you an example if you need 10 one. 11 Q. Why don't we go into more of that after a 12 break. 13 VIDEOGRAPHER: Here ends tape number one 14 The time on the video monitor is 11:20 a.m. 15 (A recess was taken.) 16 VIDEOGRAPHER: Here begins media two. The 17 time on the video monitor is 11:34 a.m. 18 BY MS. KIM: 19 Q. Mr. Gray, before break we were going 20 through Exhibit 4, the Background Questionnaire. 21 A. Yes. 22 Q. And I had a question about -- if you go to 23 page 5 of Exhibit 4, question 20. 24 A. Okay. 25 Q. This asks for all securities or brokerage</p>
<p style="text-align: center;">Page 50</p> <p>1 were, just to clarify. 2 I'm not sure I'm supposed to say this, 3 but whenever you find a good stopping point for me to 4 use the restroom. 5 Q. Let's follow up with that one. So you 6 said 2006 to 2011 Archipel Capital's partners? 7 A. Yes. 8 Q. And who are those partners? 9 A. Greg Gray, Greg Edwards and Tony Oram. 10 We would have been active in venture capital 11 offerings during that period of time. 12 Q. I'm sorry. I am confused here. You said 13 "We would have been active." 14 A. So from 2006 until 2008, I worked for 15 Advanced Equities. Greg Edwards and Tony Oram were 16 my clients at Advanced Equities. We made, "we" 17 meaning the three of us, made investments during that 18 time into portfolio companies. 19 Some of those investments were not liquid 20 until 2008, 2009, 2010. 21 All those monies had nothing to do with 22 Archipel Capital BIM Management. 23 Q. Was that your -- were you investing your 24 own money? You said there was an investment into 25 portfolio companies.</p>	<p style="text-align: center;">Page 52</p> <p>1 accounts over which you had any control at any time 2 during the last four years. Were there any securities 3 accounts or brokerage accounts that should have been 4 included here? For example, with Computershare or 5 Fidelity? 6 A. Okay, yes. I misread that question. I 7 was thinking it was more personal than corporate. 8 We did have a brokerage account for 9 Archipel Capital's Social Media Fund through Fidelity 10 Investments. 11 Q. Were there any other accounts for -- 12 starting with Social Media Fund LP? 13 A. Any other brokerage accounts other than 14 that one? 15 Q. Or securities accounts. 16 A. No. 17 Q. And what about for the other limited 18 partner -- Archipel Capital limited partnerships? 19 A. We have bank accounts, but we don't have 20 any brokerage or securities accounts. 21 Q. And I think bank accounts I will ask about 22 in a later question which I will get to. For now just 23 sticking with brokerage or securities accounts, I know 24 you listed for a personal account Fidelity 25 Investments?</p>

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<p>1 A. Yes.</p> <p>2 Q. That is the response to question 18. Are</p> <p>3 there any other securities or brokerage accounts?</p> <p>4 A. No.</p> <p>5 Q. Was there a Computershare account for</p> <p>6 Social Media Fund LP?</p> <p>7 A. Yes.</p> <p>8 Q. What kind of account was that?</p> <p>9 A. I don't have an answer for that. It's an</p> <p>10 account for -- it's not a brokerage account, to my</p> <p>11 knowledge. I don't know what you call Computershare.</p> <p>12 I'm sorry, I know what Computershare is. I know</p> <p>13 what they do. I just don't know how you classify</p> <p>14 them in the scheme of things.</p> <p>15 Q. What was the account?</p> <p>16 A. It was where shares were held of Twitter.</p> <p>17 Q. Did you have discretionary authority over</p> <p>18 the Fidelity account for Social Media Fund LP?</p> <p>19 A. I don't think I ever asked for</p> <p>20 discretionary trading. Is that what you are asking?</p> <p>21 Q. Was it your -- I'm sorry. Let me</p> <p>22 rephrase. Did you -- were you the one who controlled</p> <p>23 it, the account?</p> <p>24 A. Yes.</p> <p>25 Q. Also, the Computershare account that held</p>	<p>1 following entities: BIM Management LP, Archipel</p> <p>2 Capital-Bloom Energy LP, Archipel Capital-Lineagen</p> <p>3 LP, Archipel Capital -- all of our entities, and they</p> <p>4 are all currently held at M&T Bank.</p> <p>5 Q. And are there bank accounts for any</p> <p>6 Archipel Capital-related entity at any other bank</p> <p>7 currently open?</p> <p>8 A. Not to my knowledge, no. We used Bank of</p> <p>9 America years ago, but to my knowledge they are all</p> <p>10 closed.</p> <p>11 Q. When were you -- sorry. You said you used</p> <p>12 Bank of America years ago. What did you mean by that?</p> <p>13 A. Our previous banking relationship was</p> <p>14 with Bank of America.</p> <p>15 Q. When you say "our," do you mean for all</p> <p>16 the Archipel Capital-related entities?</p> <p>17 A. The entities that were opened previous --</p> <p>18 that were open at that time, we used to use Bank of</p> <p>19 America.</p> <p>20 Q. When was that?</p> <p>21 A. To the best of my knowledge, May of 2011.</p> <p>22 My guess would be the end of 2012, but I can't say</p> <p>23 for certain.</p> <p>24 Q. Was there -- approximately the end of 2012</p> <p>25 did you switch all the accounts from Bank of America</p>
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<p>1 the Twitter shares, were you the one who controlled</p> <p>2 that account?</p> <p>3 A. Yes.</p> <p>4 Q. For the Fidelity Investments account</p> <p>5 listed under question 18, your personal account, is</p> <p>6 that in your name individually?</p> <p>7 A. Yes.</p> <p>8 Q. And does anyone else have control over</p> <p>9 that account?</p> <p>10 A. No.</p> <p>11 Q. And then if you go to page 6 of Exhibit 4,</p> <p>12 question number 23 asks for "all accounts at financial</p> <p>13 institutions over which you had any control."</p> <p>14 For the record, I cut out a few words in</p> <p>15 the middle of that.</p> <p>16 For this one, you didn't -- you wrote NA,</p> <p>17 not applicable, correct?</p> <p>18 A. Correct, yes.</p> <p>19 Q. And did you have -- now that we have been</p> <p>20 discussing, do you know of accounts at financial</p> <p>21 institutions over which you have control that are not</p> <p>22 listed in the questionnaire?</p> <p>23 A. Yes. Now that I have additional</p> <p>24 clarity -- I misread that question -- we do have</p> <p>25 banking account -- bank accounts open for the</p>	<p>1 to M&T Bank?</p> <p>2 A. Yes.</p> <p>3 Q. Why was that?</p> <p>4 A. I got fed up with the waiting on line at</p> <p>5 Bank of America. I wish I could give you a better</p> <p>6 answer.</p> <p>7 Q. Question 24 on the same page of Exhibit 4</p> <p>8 requests other accounts other than those listed held</p> <p>9 in your name, and you list PayPal. Is that an account</p> <p>10 that is in your name?</p> <p>11 A. I don't know how PayPal works. I have</p> <p>12 paid for things on PayPal so I wanted to put PayPal</p> <p>13 down there.</p> <p>14 Q. Is it used for business purposes?</p> <p>15 A. No.</p> <p>16 Q. And then if you go to question 25 on the</p> <p>17 same page of Exhibit 4, this asks about prior</p> <p>18 proceedings and you list NASD-FINRA, see Gregory W</p> <p>19 Gray Jr. Was that a NASDAQ action?</p> <p>20 A. Not a NASDAQ action but NASD.</p> <p>21 Q. Who brought an action?</p> <p>22 A. I believe it was NASD.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. Could it have been the New York Stock</p> <p>25 Exchange?</p>

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<p>1 A. That was the end party so to my knowledge 2 it was NASD, and then they changed their name to 3 FINRA, and then for whatever reason it became a stock 4 exchange matter so in 2003 to 2009, it evolved from 5 one to two to three.</p> <p>6 Q. Okay.</p> <p>7 BY MS. KIM:</p> <p>8 Q. It says here you testified in 2004, 2006 9 and 2008, approximately.</p> <p>10 A. Yes.</p> <p>11 Q. Were those testimonies all before 12 NASD/FINRA?</p> <p>13 A. They were on the phone with -- yes. 2004 14 and 2006 approximately were with NASD and FINRA. 15 2008 I believe was with NYSE.</p> <p>16 Q. Did you ever testify before the 17 Commission, the SEC?</p> <p>18 A. I don't believe so, no. 19 To clarify, you consider NYSE and the 20 Commission two different entities?</p> <p>21 Q. Yes.</p> <p>22 A. I don't believe so.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. We will talk about some of that. Just to 25 be clear, in the appeal of the NASD/NYSE action in</p>	<p>1 or in front of the SEC so I'm not sure which appeal 2 you are referring to.</p> <p>3 Q. If you go to page 8 of the questionnaire, 4 Exhibit 4, you list three institutions here for 5 educational history. Did you graduate from Xavier 6 University?</p> <p>7 A. No, I actually moved before I graduated.</p> <p>8 Q. What about University of Cincinnati?</p> <p>9 A. No, I transferred to Xavier.</p> <p>10 Q. Did you get a degree from Onondaga 11 Community College?</p> <p>12 A. No, I transferred to the University of 13 Cincinnati.</p> <p>14 Q. So you haven't -- have you received a 15 degree from any college?</p> <p>16 A. I have not, no.</p> <p>17 Q. If you go to page 9, question 32, this 18 lists -- you list here four exams that you have taken; 19 is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. So exam 6, 7, 63 and 66; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Are these -- the dates you list here, are 24 these the dates you passed?</p> <p>25 A. I presume, yes.</p>
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<p>1 which the Commission eventually wrote an opinion, did 2 you provide any testimony directly to any Commission 3 people during that period, or was it just on the 4 record of what had happened on the lower -- you know, 5 in the earlier investigative stage?</p> <p>6 A. I did not meet with the SEC, to my 7 knowledge -- I did not meet with the SEC. To my 8 knowledge, I gave my counsel at the time the 9 information to file an appeal.</p> <p>10 She may have had conversations with the 11 SEC, but I never had any direct communication with 12 them.</p> <p>13 Q. Thank you for clarification.</p> <p>14 BY MS. KIM:</p> <p>15 Q. Just following up with that, during the 16 appeal, was there a hearing?</p> <p>17 A. Can you clarify which appeal?</p> <p>18 Q. So there was an appeal to the Commission 19 of the action, the New York Stock Exchange/NASD 20 action. Was there any sort of hearing involved with 21 that?</p> <p>22 A. There was -- there was an appeal hearing 23 with the New York Stock Exchange, and then after that 24 we did a secondary appeal or third appeal -- I'm not 25 sure -- with the SEC. We did not meet with the SEC</p>	<p>1 Q. Did you draft this section?</p> <p>2 A. I put in the -- well, I put in the 3 necessary exams that I passed, and then I believe my 4 counsel pulled up my broker check form, and they put 5 those dates in there.</p> <p>6 Q. Were you registered as a broker dealer at 7 any time?</p> <p>8 A. Was I registered with a broker dealer?</p> <p>9 Q. With a broker dealer.</p> <p>10 A. Yes.</p> <p>11 Q. How long were you registered, combining 12 all the registrations together, but how long; from 13 when to when?</p> <p>14 A. My best guess would be 1998, maybe even 15 1997, would have been registered with the BD, broker 16 dealer, until 2008.</p> <p>17 Q. And have you been registered with a broker 18 dealer since 2008?</p> <p>19 A. No.</p> <p>20 Q. Have you been registered as an investment 21 advisor?</p> <p>22 A. Since when?</p> <p>23 Q. At any time.</p> <p>24 A. I believe so, yes.</p> <p>25 Q. And what is the duration of that, start to</p>

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<p>1 end, combining them?</p> <p>2 A. To my knowledge, when I passed the Series</p> <p>3 66 exam, that was the necessary exam to be qualified</p> <p>4 as an investment advisor.</p> <p>5 Q. Were you registered with any state when</p> <p>6 you passed the Series 66 exam?</p> <p>7 A. I was probably registered with many</p> <p>8 states, but I would have to check my forms to figure</p> <p>9 out which states I was registered in at that point in</p> <p>10 time.</p> <p>11 Q. And are you still a registered investment</p> <p>12 advisor?</p> <p>13 A. No.</p> <p>14 Q. And when did you cease to be a registered</p> <p>15 investment advisor?</p> <p>16 A. I just learned in December of 2014 that I</p> <p>17 am not a registered investment advisor.</p> <p>18 Q. You learned this information, I suppose,</p> <p>19 from counsel. I am not seeking that information, but</p> <p>20 how did you learn that?</p> <p>21 MR. LAWRENCE: If you can answer the</p> <p>22 question without revealing the communications between</p> <p>23 you and me or anyone on your legal team representing</p> <p>24 you in this investigation, feel free to. You should.</p> <p>25 If not, then I instruct you not to answer.</p>	<p>1 MR. LAWRENCE: I think you will get all</p> <p>2 you want and need to address the staff's concerns,</p> <p>3 hopefully. With the waiver, that was our intention.</p> <p>4 BY MS. KIM:</p> <p>5 Q. Let me go to -- we will cover that a</p> <p>6 little bit later.</p> <p>7 Page 10 of Exhibit 4, under question 36</p> <p>8 you state that your employer's name is Archipel</p> <p>9 Capital.</p> <p>10 A. Yes.</p> <p>11 Q. Would you consider Archipel your employer?</p> <p>12 A. For the purposes of this form, yes. I</p> <p>13 mean -- yes.</p> <p>14 Q. I'm just trying to get a sense, because I</p> <p>15 know you said Archipel Capital is sort of a brand name</p> <p>16 and BIM Management passes through the fees; is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. So I think I am just trying to get a sense</p> <p>20 of more what the work is that Archipel Capital does.</p> <p>21 A. So the world knows Archipel Capital as a</p> <p>22 brand. The investors know Archipel Capital as the</p> <p>23 brand, but our PPM, our legal documents, show the</p> <p>24 monies get paid to the general partner, which is BIM</p> <p>25 Management.</p>
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<p>1 A. I can't.</p> <p>2 Q. Are you unable to answer the question</p> <p>3 because it is attorney-client privilege?</p> <p>4 MR. LAWRENCE: It would require him to</p> <p>5 reveal attorney-client communications.</p> <p>6 A. Yes.</p> <p>7 MR. RAWLINGS: Just to be clear, those</p> <p>8 would be communications with his current counsel now</p> <p>9 you?</p> <p>10 MR. LAWRENCE: Me. Not Nixon Peabody.</p> <p>11 MR. RAWLINGS: Understood. I wanted to</p> <p>12 make it perfectly clear.</p> <p>13 I am going to ask a question, and I want</p> <p>14 you to see whether you want to object or not.</p> <p>15 MR. LAWRENCE: Sure.</p> <p>16 BY MR. RAWLINGS:</p> <p>17 Q. Did you ever discuss your belief that you</p> <p>18 were a registered investment advisor with Nixon</p> <p>19 Peabody at any time?</p> <p>20 MR. LAWRENCE: I guess we would just</p> <p>21 instruct him that we -- if you --</p> <p>22 MR. RAWLINGS: Let me withdraw that.</p> <p>23 There is a point in time, and we will deal with that</p> <p>24 at that point in time so let me withdraw that and move</p> <p>25 on.</p>	<p>1 BY MR. RAWLINGS:</p> <p>2 Q. Archipel has office space in Buffalo,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Who is on the lease for that office space;</p> <p>6 is it Archipel LLC or is it BIM?</p> <p>7 A. Currently there isn't a lease. They</p> <p>8 invited us to be on their campus. The lease I have</p> <p>9 in front of me currently is Archipel Capital LLC.</p> <p>10 Q. Is that an executed lease going forward?</p> <p>11 A. I just got it Friday so I haven't even</p> <p>12 looked at it other than I have it.</p> <p>13 Q. So going back a year ago or so when you</p> <p>14 had the address in Buffalo and the address for</p> <p>15 Archipel LLC, was there any fees at that time? Were</p> <p>16 you paying any rent, or no?</p> <p>17 A. We were paying rent, yes. There wasn't a</p> <p>18 lease.</p> <p>19 Q. Was the lease being paid by BIM or by</p> <p>20 Archipel LLC?</p> <p>21 A. By BIM Management LP.</p> <p>22 BY MS. KIM:</p> <p>23 Q. When you said they invited Archipel</p> <p>24 Capital to be on campus, what does that mean?</p> <p>25 A. So Archipel Capital is on the medical</p>

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<p>1 campus for the University of Buffalo, and Buffalo is 2 thriving and looking at creating an incubator program 3 as a spinoff from Roswell Park, which is a cancer 4 hospital there locally, and the University of Buffalo 5 is moving their medical campus to the medical 6 corridor as well.</p> <p>7 So the University of Buffalo probably 8 states that they have a venture capital firm on their 9 campus, which is Archipel Capital.</p> <p>10 We couldn't solicit office space there. 11 They had to ask us to join their building, because it 12 is a government -- a university-sponsored building.</p> <p>13 Q. And you don't currently pay rent to the 14 University of Buffalo?</p> <p>15 A. No. We do. We used to pay quarterly. 16 Now we pay monthly.</p> <p>17 Q. Did you say earlier that there was no 18 lease with the University of Buffalo?</p> <p>19 A. Correct.</p> <p>20 Q. There is currently a lease?</p> <p>21 A. We just --</p> <p>22 Q. Go ahead.</p> <p>23 A. We just received a lease on Friday to 24 execute for this year.</p> <p>25 Q. Is Archipel Capital on that lease?</p>	<p>1 legal documents.</p> <p>2 Q. I'm just curious. Is it a shared space or 3 is there like, you know, cubicles, like corners; 4 Archipel Capital in that corner, another incubator in 5 that corner? How does it work? I'm just curious.</p> <p>6 A. On our floor we have the Hunter's Hope 7 Foundation, which is Jim Kelly's research facility, 8 former quarterback, and then it's Archipel Capital 9 and a conference room.</p> <p>10 So not nearly as big, obviously, as here 11 when you get your own space, but when you go up to 12 the floor you need a key card to get in. Archipel 13 Capital, our signage is outside, large conference 14 room such as this.</p> <p>15 Q. Okay. Thank you.</p> <p>16 BY MS. KIM:</p> <p>17 Q. So the one thing I would also point out 18 for question 36, it asks for your employment 19 activities beginning at present and working backwards 20 to the date you completed high school. It looks like 21 from question 35 there are a number of entities that 22 are not listed in 36.</p> <p>23 Just for clarity's sake, are the entities 24 Morgan Stanley, UBS Paine Webber, Fidelity Brokerage 25 Services and McDonald & Company Securities, places</p>
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<p>1 A. Yes.</p> <p>2 Q. But BIM Management LP pays the rent to 3 University of Buffalo?</p> <p>4 A. Yes.</p> <p>5 Q. Under question 36, you have 6 Is that the University of Buffalo address?</p> <p>7 A. Yes.</p> <p>8 Q. The phone number given, is that your cell 9 phone number?</p> <p>10 A. Yes.</p> <p>11 Q. And does Archipel Capital have a landline 12 number?</p> <p>13 A. The -- so Brad LaSalle has an office at 14 the Center -- it is called the Center of Excellence 15 building at He has a landline number 16 there, but Archipel Capital as a company does not 17 have an individual number per se.</p> <p>18 Q. Is Mr. LaSalle affiliated with the 19 University of Buffalo?</p> <p>20 A. No.</p> <p>21 BY MR. RAWLINGS:</p> <p>22 Q. Is there anyone else besides Mr. LaSalle 23 who uses the address?</p> <p>24 A. Myself, Mr. LaSalle, our website and our</p>	<p>1 that you worked in high school?</p> <p>2 A. Yes.</p> <p>3 Q. You can put that aside.</p> <p>4 MR. RAWLINGS: I just want to note for the 5 record Nancy Brown has entered. Nancy Brown is a 6 trial staff attorney on the staff.</p> <p>7 Q. I am going to ask you a couple of 8 questions about Archipel Capital LLC. Where did the 9 name Archipel Capital come from?</p> <p>10 A. Approximately 2005, we were hosting 11 Easter dinner in Chicago, Illinois, and I was -- 12 needed to get a break from my in-laws so I said I 13 will go get a bottle of wine, and went down to a 14 restaurant called Charlie Trotters to go. In Charlie 15 Trotters I pick my wine by the design label, and 16 there is a small boutique vineyard there called 17 Archipel Wines. It turns out it is my favorite wine 18 I ever had in the world, a 2001 meritage blend.</p> <p>19 During my research about the wine, I love 20 their story, meaning they don't produce a wine every 21 single year. They only produce it when the climate 22 is right, the grapes are red, et cetera.</p> <p>23 We have kind of taken that business model 24 and that approach to Archipel Capital, hence the 25 name. We don't always do an offering just to do an</p>

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<p>1 offering. We only do it when the climate is right 2 for us and our investors. 3 It's a great wine too. 4 Q. You stated that you, Mr. Edwards and 5 Mr. Oram own Archipel Capital? 6 A. Yes. 7 Q. And I know we went through some 8 percentages of ownership. Is the percentage of 9 ownership for Archipel divided with the three of you 10 the same as the ownership for BIM Management? 11 A. The intention is yes, and let me clarify. 12 So Nixon Peabody created BIM Management as the 13 general partner in 2011 to accept management fees 14 from Everloop; however, that operating agreement was 15 never fully executed or prepared by Nixon Peabody to 16 this day. 17 So the intent is to have -- was to have 18 the same percentage ownership from Archipel Capital 19 to BIM Management LP. 20 Q. So what is the percent ownership for BIM 21 Management LP? 22 A. The legal percentage? I don't have an 23 answer for you, and the reason why, again, is Nixon 24 Peabody has not finished that document. We have 25 repeatedly -- meaning "we" Greg Edwards, Tony Oram</p>	<p>1 interest? 2 A. So the carried interest is another term 3 for profit. Our structure at Archipel Capital for 4 entities, we charge a 5 percent management fee 5 up-front and a 10 percent carried interest on the 6 profit so what that means is if an investor put in 7 \$100,000, we would charge a 5 percent management fee 8 or \$50,000 would be invested in that entity. 9 Upon a liquidity event, merger, an IPO, 10 that client would get their full hundred thousand 11 dollars back before any carried interest was assessed 12 to their profit. 13 Q. Is that the same -- is the fee structure 14 the same for all the Archipel Capital investments? 15 A. Yes. 16 Q. By investments, I mean the limited 17 partnership. 18 A. Yes. 19 Q. Have any of the limited partnerships had 20 this -- the liquidity event that you mentioned? 21 A. Obviously Twitter, and I don't mean to 22 say obviously, Social Media Fund had a liquidity 23 event, and depending on how you classify or 24 categorize liquidity event, I would say Everloop had 25 a liquidity event as well.</p>
<p style="text-align: center;">Page 70</p> <p>1 and myself -- have repeatedly asked Nixon for four 2 years to finish the document, and to this date it was 3 never finished. 4 The intent was, again, to have the same 5 percentage ownership from Archipel Capital to BIM 6 Management LP, and amongst the three of us we have 7 always treated it that way. 8 Q. When you say you treated it the same way, 9 how does that work in practice? 10 A. So the only -- well, how we work is -- 11 let's just hypothetically use a million dollars 12 investment. Out of a million dollars investment, we 13 charge -- well, we would receive a 5 percent 14 management fee or \$50,000. That \$50,000 would be 15 paid to BIM Management LP. 16 In terms of operating BIM Management, I 17 receive that \$50,000, meaning I could use to benefit 18 the entity. 19 Greg Edwards and Tony Oram and myself 20 divide the carried interest accordingly with the 21 percentages I just gave you. 22 Do you need me to clarify on those 23 points? It can be a little -- I just want to make 24 sure we are on the same page. 25 Q. Can you explain what you mean by carried</p>	<p style="text-align: center;">Page 72</p> <p>1 Q. That is for Everloop. What does it depend 2 on for the Everloop Limited Partnership, why does that 3 depend on how you classify the event? 4 A. People view a liquidity event as usually 5 a merger, acquisition or IPO. None of those three 6 occurred with regard to Everloop. It was more just a 7 settlement between us and the company that we 8 received money back to pay our investors. 9 For intents and purposes, monies were 10 distributed to the investors. 11 Q. After the liquidity event for those two 12 partnerships, Social Media Fund LP and Everloop LP, do 13 the partnerships still exist? 14 A. For a period of time, meaning, we'll use, 15 Social Media Fund for example. Social Media Fund 16 would exist until all the monies are distributed, 17 cash and stock, which was done, and then our legal 18 counsel at the time would do what is called a 19 wind-down of the fund, wind down of the limited 20 partnership with the State of Delaware, and they 21 would wind down the partnership. 22 Q. Has Social Media Fund LP then wound down? 23 A. I don't know the answer to that. I know 24 Nixon Peabody has stated in the past they would start 25 to wind down the process once all monies were sent,</p>

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<p>1 which was completed I believe in July of 2014. 2 Usually I don't start that process until 3 now when our K-1s will start being distributed, but 4 that is something I will need to follow up with Nixon 5 Peabody regarding.</p> <p>6 Q. When are the K-1s distributed?</p> <p>7 A. Usually mid-March. This year it might be 8 a week later just because we transitioned over to 9 KRFS.</p> <p>10 Q. Are there -- apart from the owners of 11 Archipel, are there other principals of Archipel?</p> <p>12 A. Other than Greg Edwards, Tony Oram and 13 myself? No.</p> <p>14 Q. And you are the senior managing director 15 of Archipel, right?</p> <p>16 A. Yes.</p> <p>17 Q. Does Mr. Edwards have a title for 18 Archipel?</p> <p>19 A. We have given him the title chairman of 20 the board since he is the most senior one of us with 21 the greatest resume, if you will.</p> <p>22 Q. And who else is on the board of Archipel?</p> <p>23 A. The advisory board?</p> <p>24 Q. You said Edwards is the chairman of the 25 board. What board is that referencing?</p>	<p>1 Everloop was failing as an investment. What could 2 Archipel Capital do to try to help the investors, 3 still try to save this investment and drive that 4 valuation, either for an exit or to get more users 5 onboard.</p> <p>6 So we looked at who our investors were, 7 who our advisors were, and how can we help this 8 company be in a better place going forward?</p> <p>9 So we looked at Tim Green. Tim Green is 10 an advisor to Archipel Capital. Tim is a former NFL 11 player. He is a lawyer, he is a Rhodes scholar, he 12 is a New York Times best selling author.</p> <p>13 So we would engage Tim Green -- Archipel 14 Capital would engage Tim Green to help utilize his 15 resources, his network to bring users to Everloop to 16 try to increase the valuation in the company.</p> <p>17 Q. So was Tim Green on Archipel's advisory 18 board?</p> <p>19 A. Yes.</p> <p>20 Q. And you said Archipel would engage someone 21 like Tim Green. Does Archipel pay Tim Green?</p> <p>22 A. Tim is the only paid member of any of our 23 advisors, and the rationale behind that is Tim -- his 24 ability to cut through bureaucracy to get us the 25 right person was invaluable to Everloop, and for</p>
<p>1 A. Really he is just the chairman of 2 Archipel, which is the title given over to the 3 corporation, if you will.</p> <p>4 Q. So is there a board of directors of 5 Archipel Capital?</p> <p>6 A. We have an advisory board.</p> <p>7 Q. What does the advisory board do?</p> <p>8 A. Every advisor has a different role. I 9 can go advisor by advisor if you like and let you 10 know what they do for us or have done for us, but 11 their job is, in essence, utilize their relationships 12 to help drive the valuation of our intended portfolio 13 company.</p> <p>14 So with respect to each individual 15 advisor, they may have specific areas of expertise in 16 one of our portfolio companies; chances are not all.</p> <p>17 Q. What do you mean by use relationships to 18 drive valuation?</p> <p>19 A. So in our -- in the venture capital 20 community, unlike the public markets, we look at the 21 price of the stock increasing \$30, \$40. That's an 22 increase in stock price.</p> <p>23 In our language, think of valuation as a 24 stock price so we look at our circle, if you will, 25 and look at -- we'll use Everloop for an example.</p>	<p>1 other relationships.</p> <p>2 Case in point, we brought Everloop 3 through -- Archipel Capital brought Everloop to the 4 number two person at the NFL for a meeting.</p> <p>5 The NFL wanted to be a part of the 6 Everloop story in particular because of Tim Green.</p> <p>7 Unfortunately, Everloop could not execute 8 the next phase of that, and we never wound up getting 9 the NFL brand on our platform.</p> <p>10 Same thing with Tim Green's publisher, 11 which was Harper Collins. Tim would engage us with 12 Harper Collins, which obviously has a tremendous 13 audience for kids' books so Tim would get us in front 14 of his publisher. We could tell the Everloop story 15 to, again, try to get kids, Harper Collins kids, 16 under Everloop's platform.</p> <p>17 Everloop was a social network for kids in 18 a controlled safe environment called COPPA 19 compliance, C-O-P-P-A.</p> <p>20 MR. LAWRENCE: Just to interject, all of 21 that is interesting but I don't think responsive to 22 her question.</p> <p>23 THE WITNESS: Sorry.</p> <p>24 MR. LAWRENCE: We will be here a long time 25 if we go over the life story of all your investments.</p>
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<p>1 A. Sorry.</p> <p>2 MR. LAWRENCE: I think you answered it at</p> <p>3 the beginning. You provided a lot of context.</p> <p>4 MS. KIM: That's fine.</p> <p>5 MR. LAWRENCE: You can't remember the</p> <p>6 question. I understand.</p> <p>7 MR. RAWLINGS: To be fair, Hane will chime</p> <p>8 in to move things along when she feels it is</p> <p>9 necessary.</p> <p>10 MR. LAWRENCE: And I waited until he was</p> <p>11 done.</p> <p>12 MR. RAWLINGS: You certainly did, which</p> <p>13 was good.</p> <p>14 So noted.</p> <p>15 THE WITNESS: My apologies.</p> <p>16 MR. LAWRENCE: I was just thinking we</p> <p>17 probably want to conclude some time today.</p> <p>18 BY MS. KIM:</p> <p>19 Q. Mr. Edwards was the chairman of the board;</p> <p>20 that is his title?</p> <p>21 A. Yes.</p> <p>22 Q. Does Mr. Oram have a title?</p> <p>23 A. No.</p> <p>24 Q. And do each of you have separate duties</p> <p>25 and responsibilities for Archipel?</p>	<p>1 So Tony's relationships are more in the</p> <p>2 institutional world, the Canadian Pension Plan, the</p> <p>3 Quebec Pension Plan, Ontario Teachers Pension Plan</p> <p>4 Those are just too big relationships for us too</p> <p>5 handle right now so he is more of a silent investor</p> <p>6 than anything else.</p> <p>7 Q. You said you would find investors for the</p> <p>8 Archipel Capital investments; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. That is for the limited partnership and</p> <p>11 LLC entities?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have other people help find</p> <p>14 investors for the limited partnerships and LLC</p> <p>15 entities?</p> <p>16 A. Yes.</p> <p>17 Q. Who were those people?</p> <p>18 A. Devin Stelljes, Andrew Russo, his partner</p> <p>19 Ryan McMahon. I don't know if you want to lump them</p> <p>20 together or separate. Brad LaSalle and Bill</p> <p>21 S-H-R-I-M-P-F.</p> <p>22 Q. S-C-H-R-I-M-P-F.</p> <p>23 Were these people Archipel Capital</p> <p>24 employees?</p> <p>25 A. Devin Stelljes was. Andrew Russo was</p>
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<p>1 A. Yes.</p> <p>2 Q. What are your duties and responsibilities?</p> <p>3 A. My duties really are finding the</p> <p>4 investors.</p> <p>5 Again, working with the investments we</p> <p>6 have and utilizing our network to help drive that</p> <p>7 valuation of that company for a successful exit.</p> <p>8 Q. What does Mr. Edwards do, his duties and</p> <p>9 responsibilities?</p> <p>10 A. I best can categorize Mr. Edwards as</p> <p>11 almost a godfather in the sense that Greg can see</p> <p>12 things -- Greg Edwards, that is -- can see things</p> <p>13 three to five steps down the road so he is my mentor,</p> <p>14 my sounding board, with regard to pretty much</p> <p>15 everything we do at Archipel Capital or its entities.</p> <p>16 Q. What about Mr. Oram?</p> <p>17 A. So Tony, Tony Oram, he was the head of</p> <p>18 institutional trading for a wide variety of firms in</p> <p>19 Toronto. At this point in time, Tony is more silent</p> <p>20 than anything else. His relationships are too big</p> <p>21 for us to fill their demand, if you will, so what I</p> <p>22 mean by that is when Tony -- prior to Twitter --</p> <p>23 well, when Twitter went public, Tony came to me and</p> <p>24 said "I have a client who wants \$300 million of</p> <p>25 Twitter." Well, we don't have that supply.</p>	<p>1 the -- is a CFA and registered representative. Bill</p> <p>2 Schrimpf was a registered representative, and Brad</p> <p>3 LaSalle works for Archipel Capital.</p> <p>4 Q. So Brad LaSalle is an employee?</p> <p>5 A. Yes.</p> <p>6 Q. Aside from Mr. Stelljes and Mr. LaSalle,</p> <p>7 has Archipel Capital had any other employees?</p> <p>8 A. We had one assistant 2010, named Jessica</p> <p>9 Buscaglia, B-U-S-C-A-G-L-I-A, probably for a</p> <p>10 six-month period of time, and then she left to take a</p> <p>11 new job. And then my assistant, Kristy Cicchitti.</p> <p>12 Kristy was with us for, I believe, three years.</p> <p>13 Q. And your wife is Cynthia Hyde Gray;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Is she an Archipel employee?</p> <p>17 A. Tricky subject. My wife was going to --</p> <p>18 my wife did resign from her job at Roswell Park in</p> <p>19 September to take over for Kristy Cicchitti's</p> <p>20 responsibilities to be my assistant and get more</p> <p>21 involved.</p> <p>22 My definition of resignation is actually</p> <p>23 quitting your job and moving -- depending how you</p> <p>24 look at it, she decided to keep her job at Roswell</p> <p>25 Park so we are now looking to hire a new assistant so</p>

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<p>1 the answer is she is not really with Archipel 2 Capital. 3 We were looking to transition her into 4 that role. She never took that role. She kept her 5 job at Roswell. 6 Q. You mention Russo, Mr. Russo and 7 Mr. McMahon and Mr. Schrimpf. What is their 8 relationship with Archipel? 9 A. They were advisors who introduced their 10 relationships to our offerings. 11 Q. Were they paid for this? 12 A. They received part of our management fee, 13 yes. 14 Q. And by management fee, do you mean that 15 up-front 5 percent fee? 16 A. Yes. 17 Q. And did they receive any part of the 18 carried interest? 19 A. If there is going to be a liquidity 20 event, they would be entitled to part of the carried 21 interest, yes. 22 Q. With the advisory board, I know you said 23 they advise on the investments. Is that -- 24 A. Well, they advise on more of a macro 25 point of view around the space than the actual</p>	<p>1 Capital would receive money from our -- so Lineagen, 2 the actual company, would pay Archipel Capital. 3 Archipel Capital would turn around and pay Mark 4 Smith, and the reason it was done that way is because 5 we needed to categorize Mark Smith as a hired 6 employee for the Start-Up New York campaign. 7 In addition to that, we also won New York 8 State grants for Lineagen, and, again, they all have 9 quotas attached to how many jobs we need to have in 10 New York State so we couldn't have Mark Smith, the 11 head of national business development, employed by 12 Lineagen until all the legal language was done by 13 Albany. 14 Q. How long was Mark Smith paid by Archipel 15 Capital? 16 A. Yes. Today should be his last day. So 17 we won a grant in 2013 by NYSERDA. It is getting 18 funded in 2015, and now Mark -- that grant has been 19 fully funded to the portfolio company Lineagen, and 20 now Mark Smith can transition off of Archipel Capital 21 payroll onto Lineagen's payroll in Utah. 22 Q. So the Lineagen-Mark Smith relationship 23 where Archipel Capital received money from Lineagen 24 Incorporated, and then Archipel would pay Mr. Smith 25 went from 2013 until yesterday?</p>
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<p>1 company we are investing in. 2 Case in point, Todd Lucksinger, 3 L-U-C-K-S-I-N-G-E-R, is part of our advisory board. 4 In full disclosure, he is also an investor, but Todd 5 has a son that is autistic, and when doing our due 6 diligence on one of our portfolio companies, 7 Lineagen, he would help us understand the overall 8 space in autism rather than the company as an 9 investment. 10 Q. What about Mark Adam Smith? 11 A. So Mark is the head of national business 12 development for one of our portfolio companies, 13 Lineagen. 14 Q. And is he paid by Archipel? 15 A. So in 2014, Archipel Capital on behalf of 16 Lineagen applied to get Lineagen tax free status in 17 the State of New York, what is known as Start-Up New 18 York. It is a Governor Cuomo initiated plan. 19 Lineagen was the first company to be 20 announced winning Start-Up New York, and the govern 21 announced that before the legal language was 22 finished, so the way that the program works is you 23 could not have an employee in Start-Up New York until 24 all the legal language was done. 25 The reason I bring that up is Archipel</p>	<p>1 A. No. It would have went from 2 approximately March of 2014 until yesterday, 3 approximately yesterday. 4 Q. Was Mr. Smith paid by Archipel Capital 5 LLC? 6 A. No. 7 Q. Where did the money -- did it go to the 8 Lineagen -- Archipel Capital-Lineagen entity? 9 A. Yes. 10 Q. So Lineagen Inc. would pay Lineagen LP. 11 Lineagen LP would pay Mark Smith? 12 A. Yes. 13 Q. I want to talk about -- going back to the 14 entities that work with Archipel, so starting with 15 Freed Maxick, who at Freed Maxick did you work with? 16 A. Bill -- tough one -- Ianerelli, 17 I-A-N-E-R-E-L-L-I, and then -- I don't remember his 18 two colleagues. 19 Q. What about at Nixon Peabody? 20 A. Our primary contact was John Koepel, 21 K-O-E-P-P-E-L. 22 Q. Were there other attorneys at Nixon 23 Peabody that you worked with? 24 A. Yes. 25 Q. Who were they?</p>

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<p>1 A. Bruce Copeland, C-O-P-E-L-A-N-D, and Mark 2 Molloy, M-O-L-L-O-Y, were the three primaries. 3 Q. Did they represent you in connection with 4 creating the LP entities? 5 A. Mr. Koeppel at Nixon Peabody is the one 6 who created the entities. The other two were 7 different matters. 8 Q. And the other two, did those relate to 9 litigation? 10 A. Bruce Copeland helped with a litigation 11 case, yes. Mark Molloy helped with a Department of 12 Labor case. 13 Q. What about Carolyn Nussbaum? 14 A. Carolyn Nussbaum, yes. She was also a 15 lawyer at Nixon Peabody. Sorry. 16 Q. Did she represent Archipel Capital in 17 connection with creating the limited partnerships? 18 A. No, not to my knowledge. 19 Q. And what was the scope of her 20 representation? 21 A. When we had a client complain -- 22 MR. LAWRENCE: Was this the labor issue? 23 THE WITNESS: No. 24 MR. LAWRENCE: This was not in connection 25 with the formation of the funds?</p>	<p>1 A. No. 2 Q. Was there a reason for that? 3 A. Ed Green, hence the name Green & Seifter, 4 he was 87. He retired, and then the law firm really 5 split into four separate law firms so I believe we 6 had four lawyers working the case, and now they are 7 at four different law firms. 8 Q. Nixon Peabody prepared the offering 9 documents for the Archipel Capital offerings, right? 10 A. Other than that Agrivida, they prepared 11 every other PPM and sub doc, yes. 12 Q. Other than Agrivida LLC, did they also 13 structure all of those partnerships? 14 A. Could you clarify structure? 15 Q. Who came up with the idea to use limited 16 partnerships for -- 17 A. Nixon Peabody. 18 Q. And what was the reason for that? 19 A. I don't recall. Sorry. 20 Q. Is there a reason why Agrivida is an LLC? 21 A. I don't recall. 22 Q. For the preparation of offering documents, 23 you said Nixon Peabody prepared for other than 24 Agrivida all the PPMs and subscription documents? 25 A. Yes.</p>
<p>1 THE WITNESS: No. 2 MR. LAWRENCE: Can you just give a one or 3 two-word -- 4 THE WITNESS: Twitter. 5 MR. LAWRENCE: So there was a dispute 6 relating to Twitter, right? 7 THE WITNESS: Yes. 8 Q. What about the law firm Green & Seifter? 9 A. Green & Seifter prepared our fund 10 formation for Agrivida. 11 Q. That is for the Agrivida LLC? 12 A. Yes. 13 Q. Why did Green & Seifter work on that? 14 A. We chose -- we had a lot of Syracuse 15 investors and Bennington Everloop, the partnership. 16 We wanted to reward our investors and give them our 17 next opportunity to be our legal counsel; just giving 18 investors greater comfort in having a law firm in 19 Syracuse. 20 Q. You said you wanted to reward investors. 21 Were there investors at Green & Seifter? 22 A. No. It was more rewarding Syracuse, the 23 community. I misspoke. 24 Q. Did you use Green & Seifter on any of the 25 Archipel Capital investments?</p>	<p>1 Q. Was that Mr. Koeppel? 2 A. Yes. 3 Q. Was anyone else involved in that? 4 A. Todd Tidgewell, T-I-T -- sorry -- 5 T-I-D-G-E-W-E-L-L so our primary contact at Nixon 6 initially was Todd and John. 7 Q. Does Mr. Tidgewell -- did that 8 relationship end at any point? 9 A. With Nixon Peabody or with Archipel? 10 Q. With Archipel. 11 A. No. I don't know if he still works at 12 the firm. I haven't heard from him since Everloop 13 so . . . 14 Q. So he only worked on the Everloop? 15 A. To the best of my knowledge, yes. 16 Q. So BIM Management has been the general 17 partner or managing member of all of the Archipel 18 Capital limited partnerships? 19 A. Yes. 20 Q. And then it would have been a managing 21 member for Agrivida LLC? 22 A. It is still the general partner. I 23 believe BIM Management is the general partner on 24 every offering. 25 Q. What about Archipel Capital-Amyris</p>

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<p>1 Biotechnologies LLP?</p> <p>2 A. We never did anything with that.</p> <p>3 Q. Was there ever any investment in Amyris</p> <p>4 Biotechnologies, the company?</p> <p>5 A. By Archipel Capital?</p> <p>6 Q. By Archipel Capital or its investors.</p> <p>7 A. Not by Archipel Capital, but our</p> <p>8 principals invested in Amyris so Greg Edwards and</p> <p>9 Tony Oram were both investors in Amyris.</p> <p>10 MS. KIM: Off the record for one minute.</p> <p>11 VIDEOGRAPHER: Here ends media two. The</p> <p>12 time on the video monitor is 12:30 p.m.</p> <p>13 (Discussion off the record.)</p> <p>14 VIDEOGRAPHER: Here begins media three.</p> <p>15 The time on the video monitor is 12:31 p.m.</p> <p>16 MR. RAWLINGS: I just want to clarify with</p> <p>17 respect to Ms. Brown. She is a trial attorney, but is</p> <p>18 not on the Formal Order and is not an officer and</p> <p>19 won't be asking any questions. I just wanted to make</p> <p>20 that clear.</p> <p>21 VIDEOGRAPHER: The time on the video</p> <p>22 monitor is 12:31 p.m.</p> <p>23 (Discussion off the record.)</p> <p>24 VIDEOGRAPHER: The time is 12:36 p.m.</p> <p>25 MS. KIM: The next exhibit is NY-9143</p>	<p>1 Q. The initial email, it appears he provides</p> <p>2 a list of questions, and then there is typing after</p> <p>3 the questions that is a slightly different shade of</p> <p>4 gray in this document; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Are those your responses to his questions?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. If you go to the second page of Exhibit 5</p> <p>9 ending with Bates number 301, you see there is a</p> <p>10 question appears to come from Mr. Byles-Smith. He</p> <p>11 asks "It is indicated to us last year that there was</p> <p>12 going to be a change in ownership during 2013. What</p> <p>13 is the current ownership structure of BIM?"</p> <p>14 Do you see that question?</p> <p>15 A. Yes.</p> <p>16 Q. Was there a change of ownership of BIM</p> <p>17 Management LP in 2013?</p> <p>18 A. What this is in reference to is the</p> <p>19 incompleted BIM Management formation by Nixon Peabody</p> <p>20 so for simplicity purposes, since Nixon Peabody did</p> <p>21 not complete BIM Management, I was the sole --</p> <p>22 legally I was the sole owner of BIM.</p> <p>23 Actually, let me restate that. I believe</p> <p>24 I was the sole owner of BIM Management. It was</p> <p>25 Nixon's -- Nixon Peabody's job to create a BIM</p>
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<p>1 Exhibit 5.</p> <p>2 (Email dated August 25th, 2014 marked</p> <p>3 Exhibit 5.)</p> <p>4 MS. KIM: For the record, it is an email</p> <p>5 chain. The top email is from Mr. Gray to Daniel</p> <p>6 Byles-Smith, and Ms. Cicchitti copying Mr. Iannarelli</p> <p>7 and Steve Cardarelli. It is Bates stamped A Archipel</p> <p>8 032300 through 301. It is dated August 25th, 2014.</p> <p>9 Q. Mr. Gray, first of all, do you recognize</p> <p>10 this document?</p> <p>11 A. Yes.</p> <p>12 Q. What is it?</p> <p>13 A. It looks like a chain of emails between</p> <p>14 us and our accounting firm Freed Maxick.</p> <p>15 Q. Who is Mr. Byles-Smith?</p> <p>16 A. He would be Bill Iannarelli's partner,</p> <p>17 colleague.</p> <p>18 Q. And Steve Cardarelli?</p> <p>19 A. I am assuming the same thing. I don't</p> <p>20 know for certain.</p> <p>21 Q. But also at Freed Maxick?</p> <p>22 A. Yes.</p> <p>23 Q. And it looks like Mr. Byles-Smith sent you</p> <p>24 a question regarding the BIM tax returns?</p> <p>25 A. Yes.</p>	<p>1 Management and put the appropriate ownership and</p> <p>2 percentages in there for the year, for the respective</p> <p>3 year.</p> <p>4 Q. Mr. Byles-Smith asks "In 2012 it consisted</p> <p>5 of Gregory Gray, 75 percent, and Greg Edwards,</p> <p>6 25 percent, but with a zero dollar K-1." Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Why in 2012 was Mr. Edwards a 25 percent</p> <p>10 owner but then in 2013 -- it appears that in 2013 you</p> <p>11 were then the 100 percent owner of BIM Management LP</p> <p>12 A. So the 5 percent management fee, so in</p> <p>13 2012 -- well, for all entities, the 5 percent</p> <p>14 management fee always goes to BIM Management. It</p> <p>15 doesn't get distributed via pro rata ownership so the</p> <p>16 back-end carried interest, it doesn't matter who owns</p> <p>17 what percentage because nothing was distributed on a</p> <p>18 carried interest perspective.</p> <p>19 So Freed Maxick came up with a structure,</p> <p>20 because Nixon Peabody didn't finalize BIM</p> <p>21 Management's agreement yet to put it in there, so</p> <p>22 they came up with a structure to have it this way.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. When you say "this way," what is the way</p> <p>25 that the structure is contemplated?</p>

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<p>1 A. Well --</p> <p>2 Q. This is a question and answer. Maybe you</p> <p>3 could tell us your understanding of what BIM was and</p> <p>4 what it is supposed to be or will be.</p> <p>5 A. Fair enough. I think that is a better --</p> <p>6 so BIM was created to accept a management fee, was</p> <p>7 created by Nixon Peabody to accept a management fee.</p> <p>8 Q. Created incompletely?</p> <p>9 A. Correct.</p> <p>10 Q. You said created, but the fact is at some</p> <p>11 point you learned that maybe it wasn't fully created,</p> <p>12 correct?</p> <p>13 A. To this day it still isn't fully created.</p> <p>14 Q. When did you understand BIM was supposed</p> <p>15 to have been created?</p> <p>16 A. BIM was supposed to be created with --</p> <p>17 May of 2011 when Nixon Peabody created the Bennington</p> <p>18 Everloop Limited Partnership. They created -- they</p> <p>19 filed for the tax ID number on the same day.</p> <p>20 Q. And at that time who were the owners of</p> <p>21 BIM supposed to be?</p> <p>22 A. Greg Edwards, myself and Tony Oram, the</p> <p>23 three of us.</p> <p>24 Q. In what percentages?</p> <p>25 A. The same percentages so 65.1 myself,</p>	<p>1 is not involved in that you three put together</p> <p>2 yourselves, right?</p> <p>3 A. We sent that to Nixon.</p> <p>4 Q. Oh, okay, got it.</p> <p>5 A. They didn't input one way or the other.</p> <p>6 It was more or less Greg Edwards saying "Hey, we are</p> <p>7 tired of you not dealing with us. We did our own</p> <p>8 agreement. Here it is."</p> <p>9 Q. When you say that it should be 100 percent</p> <p>10 me, that's just -- for purposes of answering this</p> <p>11 question, the fundamental ownership structure is still</p> <p>12 as you've talked about, the 85 -- I might be saying it</p> <p>13 wrong, but whatever you testified to previously?</p> <p>14 A. Yes.</p> <p>15 Q. We talked about carried interest. Does</p> <p>16 BIM have a value now? Do you know approximately how</p> <p>17 much the worth of the carried interest BIM has or</p> <p>18 expected carried interest on the investments that are</p> <p>19 out there?</p> <p>20 A. I have hypotheticals, but that is all it</p> <p>21 is, in the sense that we expect a return on Bloom</p> <p>22 Energy to be X. On that X, we would hope to get</p> <p>23 this.</p> <p>24 Q. If that happened now, what would that X</p> <p>25 be, approximately?</p>
<p style="text-align: center;">Page 94</p> <p>1 25 -- Greg Edwards had an escalation clause depending</p> <p>2 how much monies were raised so I may have misspoke,</p> <p>3 and that may be why this is a little bit different.</p> <p>4 I would have to look at that document. And then Tony</p> <p>5 Oram would have been 10.1 -- 9.9. Sorry.</p> <p>6 Q. Did there come a time when you realized</p> <p>7 that BIM hadn't been created properly?</p> <p>8 A. We learned in 2012 when doing our taxes,</p> <p>9 Freed Maxick asked us for a copy of the operating</p> <p>10 agreement. I sent an email to John Koeppel "Hey, can</p> <p>11 you send this to us" -- at Nixon Peabody -- and he</p> <p>12 responded "We haven't done it yet."</p> <p>13 Q. What happened then with respect to BIM's</p> <p>14 ownership structure?</p> <p>15 A. It has been on hold, the ownership</p> <p>16 structure. That is why I am saying the three</p> <p>17 principals, if you will, have an understanding how it</p> <p>18 is supposed to be, and we honor that agreement</p> <p>19 amongst us, but the legal definition, if you will,</p> <p>20 has never been fully completed by Nixon Peabody.</p> <p>21 So we, the partners, drafted our own</p> <p>22 agreement probably November of 2014, just because we</p> <p>23 got fed up with this, with not -- the incompleteness by</p> <p>24 Nixon Peabody.</p> <p>25 Q. So there is another agreement that Nixon</p>	<p style="text-align: center;">Page 96</p> <p>1 A. I think the last value I had was about</p> <p>2 7 million.</p> <p>3 Q. Okay. And then that would be split</p> <p>4 according to the ratios you described by BIM to you,</p> <p>5 Edwards and this other guy?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And the other entity that is --</p> <p>8 without being technical -- in the money, like</p> <p>9 Lineagen, is Lineagen in the money or --</p> <p>10 A. Can you clarify "in the money"?</p> <p>11 Q. Where there exists a positive carried</p> <p>12 interest.</p> <p>13 A. Well, the carried interest isn't</p> <p>14 recognized until there is actually a liquidity event.</p> <p>15 Q. That I understand.</p> <p>16 A. Okay.</p> <p>17 Q. A hypothetical positive carried interest</p> <p>18 if a liquidity event happened.</p> <p>19 A. It is hypothetical in my head. So, yes,</p> <p>20 I do think Lineagen will be at -- a very good success</p> <p>21 story for Archipel.</p> <p>22 Q. Do you have any value that you can put on</p> <p>23 that liquidity, what you think it might be?</p> <p>24 A. We're hoping -- I believe. Again, this</p> <p>25 is me, not projected with any other investors -- we</p>

24 (Pages 93 to 96)